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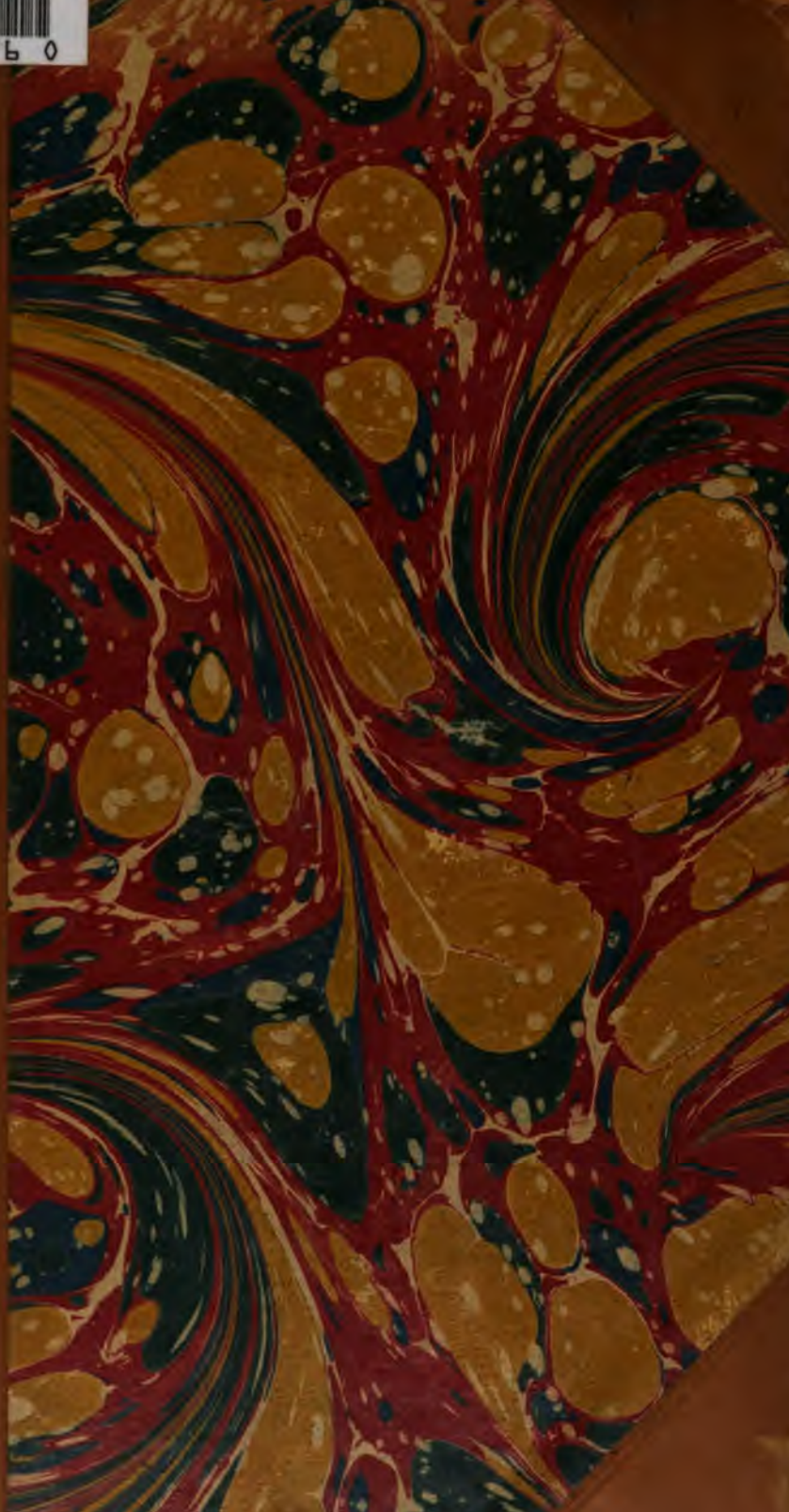
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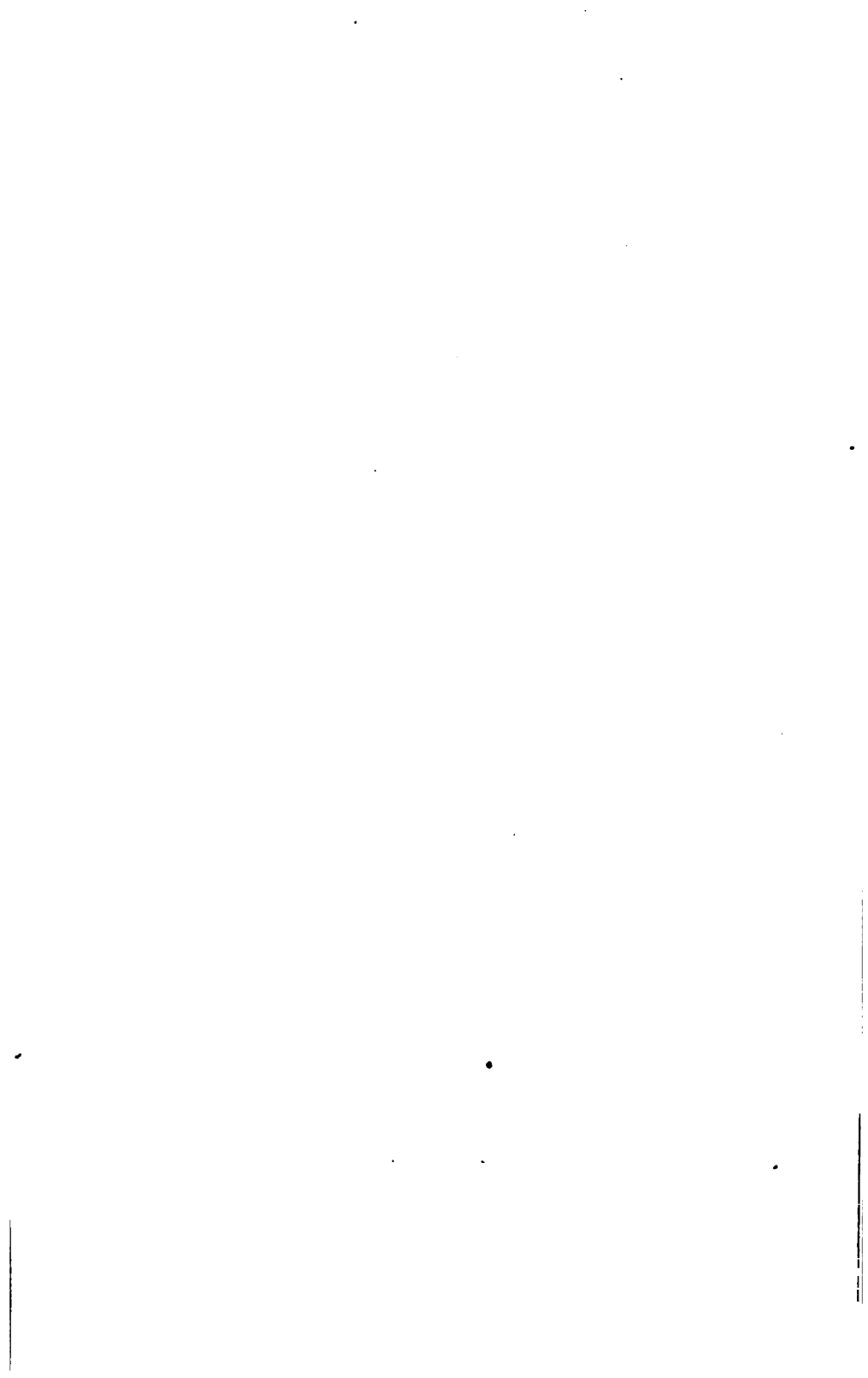


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# POLITICAL PHILOSOPHY

BY HENRY, LORD BROUGHAM, F.R.S.

MEMBER OF THE NATIONAL INSTITUTE OF FRANCE  
MEMBER OF THE ROYAL ACADEMY OF NAPLES

PART III  
  
OF DEMOCRACY  
MIXED MONARCHY

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*SECOND EDITION*

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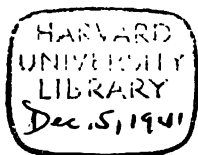
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*Charles F. Dunbar*

TO

CHARLES EARL GREY, K.G.,

*&c.*

*&c.*

*&c.*

This Volume, expounding the principles of Constitutional Polity that guided his brilliant and useful Administration, is Inscribed by the Author, in token of the friendship which has lasted during his whole public life, and of the veneration which, in common with men of all classes and all nations, he cherishes for a Statesman whose virtues have rarely been equalled, never surpassed.



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THIS volume forms the concluding portion of the Political Philosophy, as far as the great subject of Government is concerned. It comprehends also a full account of all the Constitutions in both ancient and modern times.

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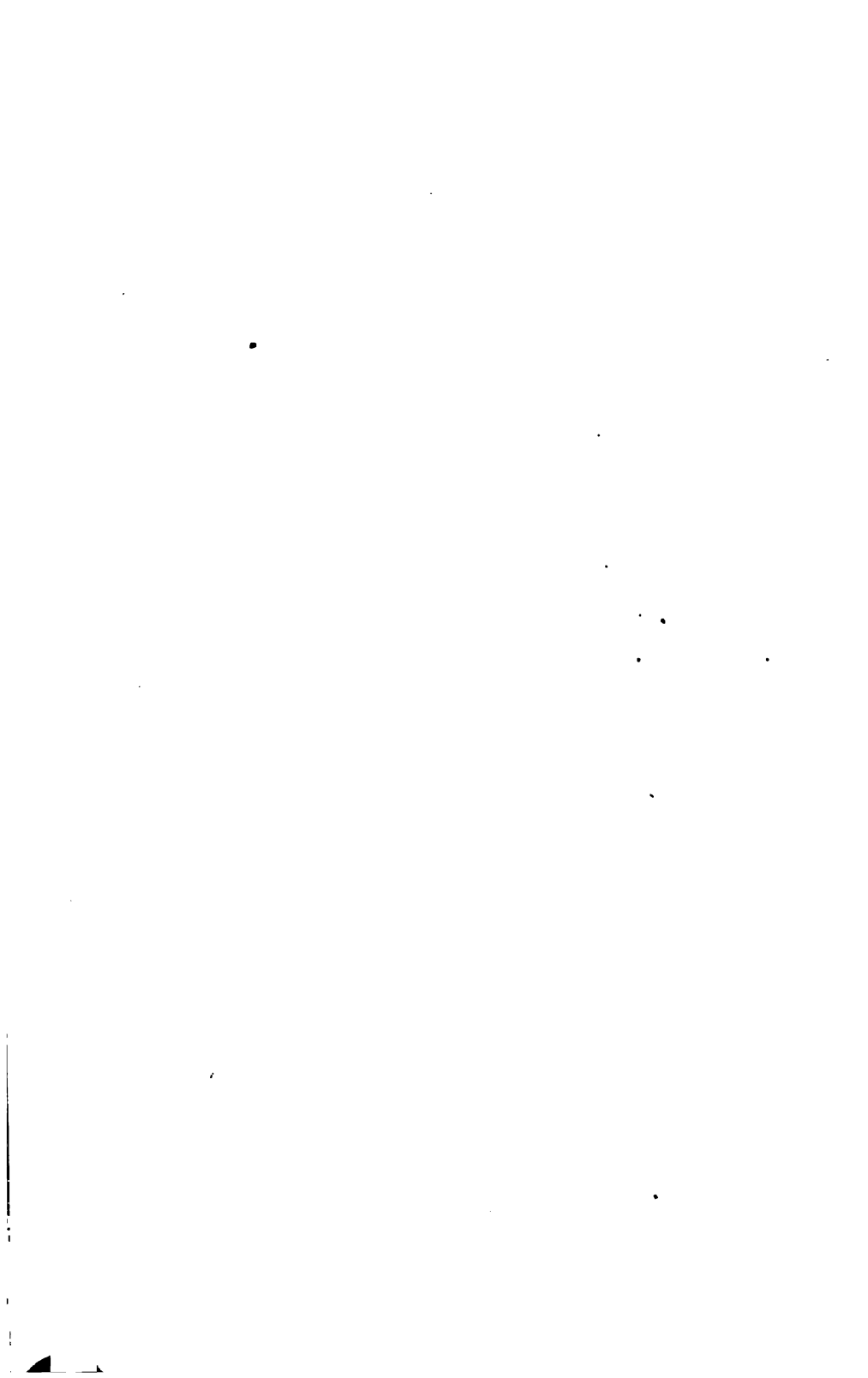
## CHAPTER XXXV.

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Connexion — Early Swiss History — Independence established — Morgarten — Confederacy formed by the three Forest Cantons or Wald-Stetten — Junction of others: Lucerne; Zurich; Zug; Glaris; Bern — Their several and federal Constitutions — Ammans; Councils; Avoyers — Soleure and Fribourg joined; Basil; Schaffhausen; Appenzell — The Constitutions of these five new Cantons — Three bases of the Federal Union — Greater privileges of the eight old Cantons — General Diet; its Proceedings — Allied Cantons — Confederates; Associates; subject Bailliages — Grison Federacy; its constitution; its corruption — Revolution of

1798 effected by France—New Republican Government—Conferences of Napoleon—Constitution of 1803; Manner of its Formation—Genius of Napoleon—Provisions of his Constitution—Contingents of Men and Money of the Cantons—Their great inequality—Population—Perfect Federal Union; its Advantages and Defects—Double Votes invented as a Remedy—Insufficient—Restrictions on the individual Governments—Directing-Canton; its functions—Diet; its meeting; its proceedings; its powers—Absurdity of the manner of Voting—Foreign Enlistment—Internal Constitution of the Cantons—Two Classes; six democratic—Their Constitution—General Assembly or Land-Gemeinde—Councils—Thirteen Aristocratic or Mixed—Great and Little Councils—Mode of Election—Grabeau—Courts of Appeal—Table of Details—Napoleon's Conduct—Existing Constitution of 1815—Twenty-two Cantons—Contingents of Troops and Money—Arbitration—Diet; its constitution; powers—Vacation—Commission—Directing-Cantons—Restoration of selling Troops, and Monastic Institutions—Six Democratic Cantons—Their Constitutions; General Assemblies; Councils—Table of Details—Seventeen Aristocratic Cantons—Their Constitutions—Great and Little Councils; composition and powers—Catholics and Protestants—Bad Principle—Elections; duration of office; qualifications—Table of Details.—Conclusion of this Work—Its Objects—The want of it—Duty of the People . . . . . p. 389

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## CHAPTER I.

### OF THE NATURE OF DEMOCRACY IN GENERAL.

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Connexion of the Subject—Definition of Democracy—Definition illustrated—Examples; America; England; Necker's Republic; Athens—Purest Democracy—Ancient Democracies filled places by lot—Error upon Disqualifications—Term Democracy preferable to Republic.

WE have now examined the three great divisions of government: Absolute, or Eastern Monarchy—Constitutional, or European Monarchy—and Aristocracy. The tendency of the first is, as society advances, to become in some degree constitutional, though this has not often happened to any considerable extent. The tendency of the second is, with the advance of society, to become aristocratic, as happened to it in Sweden and Denmark, or to become aristocratic without any considerable social improvement, as in the Feudal Monarchies. It has also a tendency towards mixed or limited Monarchy. The abuse of the Monarchical form of government is Absolute Monarchy or Despotism. The tendency of Aristocratic Commonwealths is towards Monarchy, either constitutional or mixed; and their abuse is Oligarchy. Upon the ruins of either a Constitutional Monarchy or an Aristocracy, but more rarely of the latter, a Republican or Democratic constitution has frequently been built; and, again, an Aristocracy, as we have seen in the second part of this work, has frequently grown out of popular republics both in ancient and modern times.—We now proceed to the examination of the two kinds of policy which remain to be considered, Democracy and Mixed Government—and first of Democracy.

This, as its name implies, is the government of the people, and of the people at large. The name is, therefore, preferable to



republic, because a republic may be aristocratic, as the Roman, most of the Italian, and some of the Swiss republics. It may even be Monarchical, as the Spartan and the Polish. But *Democracy* denotes the constitution which allows the superior power to reside in the whole body of the citizens, having never parted with it to a Prince, or vested it in the hands of a select body of the community, from which the rest are excluded.

In order to constitute a Democracy, therefore, it is necessary that the people should be either formally or substantially possessed of the supreme power, not sharing it with any other party independent of themselves, still less exercising authority subject to the control or revision of any other and independent body. I have said formally or substantially. If, as in the smaller republics of the old world, and in some of the smaller Italian and Swiss States of modern times, the whole people, without any preference of one class, or any distinction of ranks, make the laws by which the State is to be governed, and choose the magistrates by whom they are to be executed, then there is a Democracy in form as well as in substance; but if the whole people exercise the legislative power through deputies or representatives chosen by all, and either directly or by such delegates appoint the Magistrates, then there is equally a Democracy, the supreme legislative and executive authority being vested in the people. The making laws by delegation to representatives is no more an abdication of the legislative power in this instance, than the executing those laws by delegation to the magistrates is an abdication of the executive power in the case first put of a pure and formal Democracy.

Nor will the government cease to be Democratic, if a certain class of the people are excluded from direct power, provided that disqualified class is not prevented from becoming members of the qualified body. The United States of America have undeniably all of them a Democratic constitution, although there is in most of them an electoral qualification. If in England the Monarchy and the House of Lords were, unhappily, abolished, and the whole power of the state, executive as well as legislative, were vested in the House of Commons, it would be an abuse of terms to call the constitution aristocratic, although the elective franchise, and therefore the direct exercise of political power, would be confined to less than a million of persons—about the sixth part

of the community, that is, of males above twenty-one years of age, because the other five sixths would not be excluded from admission into the qualified class. The very essence of an aristocracy is, that a class should exist endowed with the supreme power, while into that class admission is denied to the people at large (Part II. Chap. I.). When M. Neckar, in 1802, in discussing the question whether a Monarchy or a Democracy be the best form of government for France, concluded in favour of "a republic, one and indivisible;" he proposed a constitution which vested the elective franchise, both as to the legislative and the executive functions, substantially in a body chosen by persons of considerable property; for the qualification was the payment of 8*l.* a-year of direct taxes. Yet he deemed this a purely Republican Constitution.\* No doubt there may be degrees of Democracy as of aristocracy; and a government may be termed most purely Democratic which is in the hands of all the males whose age gives them the right to be trusted by their fellow-citizens, just as the government may be termed most purely aristocratic that is vested in an hereditary body, all entrance into which is denied to every one else on any account whatever. Some of the Italian Republics gave the select or Patrician body a power of adding to their numbers. The Patrician body at Rome of old was constantly augmented by the admission of Plebeians officially. Yet it would be a great abuse of language to term these governments on that account Democratic. It would be equally erroneous to give the British Constitution on the supposition now made the name of aristocratic, as it would be to call the States of Carolina and Virginia, or of Attica, aristocracies because the slave population were excluded from all rights, and the political power, as well as all other authority, was vested in the free citizens.

We have seen (Part I. Chap. II.) that a Monarchical Government does not cease to be absolute merely because the Sovereign exercises his authority through certain functionaries, or certain Councils, appointed by himself. In like manner a government does not cease to be Democratic merely because certain arrangements are made by which the bulk or body of the people exercise

\* "Dernières Vues de Politique et de Finance." Mr. Hume, in his "*Idea of a perfect Commonwealth*," intended to design rather a mixed republic, partly aristocratic, though leaning towards democracy. The substantial power was vested in persons of 20*l.* a-year in the country, and 500*l.* capital in the towns.—*Essays*, vol. i., p. 487.

the supreme power, although these arrangements should exclude a certain number of the poorer and more ignorant citizens. Such arrangements may be adopted for the purpose of giving effect to the genuine popular will and voice; they may be used in order to prevent misgovernment and anarchy. Thus, if the community consist of a small body of well-informed persons, and a large body wholly illiterate, to give an equal voice in all affairs to the latter would be subjecting the councils of the state to the ignorance, imbecility, and incapacity of the community. Nor could we term it less a Democracy because its laws required every person to have a certain degree of knowledge, before he was entitled to exercise political power. It would not be an Aristocracy, because any one could become qualified, if he chose, for admission into the governing class.

It must, however, be granted that there is one difference between the case put and that of the Absolute Monarchy, administered by the Sovereign with Councils. These Councils are the creatures of his power and pleasure: a breath from him can unmake as it made them. They exercise no direct control whatever over him, and only share his prerogative to the extent to which it pleases him that they should. Whereas the exclusion of a great body of the people, whatever be the ground of it, and however beneficial to the State, either on account of poverty or of ignorance and incapacity, leaves a superiority in one class over the rest, and prevents the excluded classes, a considerable portion of the people, probably their majority, from enjoying political rights, while their circumstances remain unchanged. Hence it must be admitted that the Democracy is more pure which allows of no such distinctions, as in ancient times at Athens, where every citizen had the power, equally with every other, of deciding upon the legislation and the policy of the Republic. The constitution was much the worse on this account, but it was also the more purely and entirely Democratic.

Indeed the more pure of the ancient Democracies, such as the Athenian, carried the equality of political rights, and the distribution of the supreme power in the state, a step further. They made a violent endeavour to counteract the natural aristocracy, not adopting the Spartan plan to prevent all accumulation of wealth, and thus cause its equal distribution, to preserve which is manifestly impracticable, but making arrangements which either

gave the selection of persons who should fill certain situations to chance, or establishing some kind of rotation in the succession to those situations. Thus the Senators at Athens were chosen by lot; and the presiding body, the Prytanes, took their place by rotation. The *Heliaæa*, or occasional grand council, was also composed by lot; and ten of the fifty *Ephetæ*, or judges in cases of homicide, were so chosen (Part II. Chap. xvii.). In the spirit of excessive distrust and jealousy which prevails with all Democratic governments, an additional security for the division of power was taken by the short period for which office was conferred. Except the *Areopagus* no places were for life; all were annual. Nor was the choice of magistrates by lot peculiar to Athens. It seems to have been deemed essential to pure and genuine Democratic government. When Herodotus describes the reasons given for the different forms of government by the Persians, on overturning the sovereignty of the Magi, he makes Otanes, who supported a Democracy, give as one of the characteristics, that all offices were conferred by lot.\*

Now it would manifestly be most erroneous to consider the choice by lot of all or the greater part of the councils in a republic, an essential requisite of Democracy; or to consider a mixture of lot and rotation as such a characteristic. Such institutions, such contrivances of jealous distrust, might render the ancient Democracies more rigorously pure; but they never can be considered as indispensable to a Democratic form of government.† A constitution may be in the ordinary sense of the term Democratic which falls very far short of such extremes; and so in like manner it never can be called mixed, much less aristocratic, with any propriety of speech, merely because a portion of the people is in point of fact excluded from direct power, provided there be no inseparable obstacle in the way of that portion becoming part of the ruling or privileged body.‡

\* *Παλὴ μὲν ἀρχαὶ ἀρχαί.* (Thalia. 80.)

† A very respectable class of men in this country are exceedingly apt to fall into the error of confounding disqualifications and exclusions in fact, with disqualifications and exclusions in law. If a system were established which gave to all persons equally the right of voting for any important office-bearers, as parish officers or schoolmasters, the Dissenters object, because they would, in country parishes especially, be outvoted by the Churchmen. This is only because they form a minority. What they really seek is, that the minority should govern the majority, or at least that each class should choose one, which assumes that the office is to be held by two, and also that religious distinctions are to be perpetuated.

To avoid all confusion, therefore, it seems expedient to use the term *democracy* rather than *republic* for the government which is in the hands of the people. Republic does not really express this idea correctly ; it means commonwealth. Many writers have used it to designate a popular government, a government in which the supreme power is exercised by any portion of the people, as contradistinguished from monarchy. Thus they divide republics into two classes—Aristocratic and Democratic, according as a portion or the whole of the people govern. But the name of a republic has also been applied to a monarchy, as in the case of Poland ; nor, indeed, could the principalities into which the Italian republics declined, and the mixed government of the United Provinces, though termed republics, be considered in any other light than as a species of monarchy. The term Democracy is free from all ambiguity, and stands plainly distinguished both from monarchy and aristocracy.

## CHAPTER II.

## ORIGIN OF DEMOCRACIES.

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Origin of ancient Democracies obscure—Roman, Theban, Athenian, Carthaginian—  
Modern Commonwealths—Italian, Swiss, Dutch, French, American—Popular  
Government natural to Towns—Four Causes of this.

THE origin of Democratic governments in ancient times is involved unavoidably in great obscurity, and there is so much of fancy, so much indeed even of mere fable in the common accounts which national traditions have furnished of these as well as of ancient monarchies, that we are more likely to be misled than instructed by consulting them. Their details are absolutely to be rejected; if we can safely lend them any credit, it must be confined to their most general outlines. Thus we may easily assume that the earliest government of Rome, as indeed of all communities, was a rude monarchy. We may also be safe in supposing that the kings had a council of the principal inhabitants, which was called a senate; and there is no reason to doubt that the tyrannical conduct of the sovereigns occasioned a change of government, and the establishment of an Aristocratic, then of a Democratic, which soon became a mixed aristocratic, republic. But it would not be safe to trust the traditions which have been handed down of the particular incidents that attended the early revolution. We know still less of the change which at Athens substituted a Democracy for the original monarchy, or of the stages by which the archons succeeded to the kings, further than that upon the death of Codrus the power of the sovereign was much abridged, and the name of archon, or first magistrate, given to the king. But the particulars of the subsequent changes which made the office cease to be hereditary and become elective, lasting first for ten years, afterwards for a year only, are involved in complete uncertainty. Nor have we any accurate account of the

degree in which the government was Democratic before Solon's reforms, or the extent to which these reforms altered it. The probability is that the pure Democracy was only formed by degrees. The origin of the Theban or Bœotian Democracy is still more obscure; but is not always that the ancient historians make so honest a confession of their ignorance as Pausanias does when giving an account of their kings. After enumerating sixteen who followed Cadmus, he says, that being unable to find any better account of them, he has taken his narrative from fable.\* How the government became popular and aristocratic and oligarchical, we have not the least information. It never was Democratic except for a few years, when under the influence of Athens, and it generally took the part of Sparta against that Democratic republic. Of Carthage we know hardly anything for certain; and are still so little able to discover how the kings or princes that originally governed the colony, ceasing to rule, were succeeded by elective magistrates, called *suffetes*, that we are altogether in the dark as to the nature of the government even in the time of Hannibal and down to the Roman conquest; for though Aristotle's remarks upon it† (the only information we have) censure the constitution as being too Democratic, he also states enough to show that the supreme power was vested in select bodies, who only occasionally appealed to the people. But in what way this proceeding took place, how the senate were chosen, how long the office of the *suffetes* lasted, the nature of the senate, in what way the committee of one hundred were appointed, and how the pentarchy, or sub-committee of five, were named, which held their places for life till Hannibal made the office annual—all these things we are wholly ignorant of, and yet upon these the structure of the government entirely depends.‡

Our information respecting the origin of Modern Republics is, as might naturally be expected, much more full. We can with sufficient accuracy trace the changes which have substituted

\* Οὐτι γέννησιν παρεννεν. εἶπται τῷ μυθῷ, lib. ix. c. v.

† De Rep., lib. ii. c. xi.

‡ The obscurity in which the prejudices and dishonesty of the Roman historians have left us on all that relates to Carthage, is infinitely discreditable to them, and fully warrants the suspicion that the Carthaginian superiority, in almost all respects, was the cause of this jealousy. An able and judicious discussion of this point is to be found in Mr. Wortley Montague's work "On the Ancient Republics," chap. vii.

popular for monarchical government, both in Italy and in Switzerland; the extension of Democratic power in the cities, principally as commerce increased; the subsequent establishment, first of Aristocratic and afterwards of Monarchical Government, in the Italian States, with the exception of Venice, where the aristocracy was only subverted by foreign conquest; and the introduction of the aristocratic polity into several of the Swiss republics. These things have been fully explained in the former part of this work (Part II. Chap. XIX. to XXVIII.). The revolution which separated the Netherland states from the Spanish monarchy, and led to the foundation of the Dutch republic, belongs to a still more recent period of history, and thus we are accurately informed of the origin of that mixed Democracy. Those Republics, however, were never purely Democratic, nor even approached near to that model; none of them continued for any great length of time to preserve such portion as they had of the Democratic polity; and all of them were commonwealths of a limited extent. It was reserved for our own times to see the experiment of a Democracy tried both upon an extensive scale and in all the purity of the popular principle. The two great countries of France and North America have exhibited this spectacle, so interesting to political inquirers. In the former the duration of the Democratic polity was confined to a few years; in the latter it has lasted above half a century, without affording any just ground of alarm as to its continued endurance; and the particulars of its origin, as well as all the details of its structure and functions, being so well ascertained, the constitution of the United States presents the most instructive of lessons to the political student.

Although the origin of the ancient democracies may be unknown to us in detail, we may nevertheless rest assured that in almost every case the first form of government was Monarchical. In each state it probably began with the patriarchal authority of the head of the family, extended afterwards to the more skilful and experienced warrior of the tribe (Part I. Chap. III.). Either the authority of the chief was feeble, from the weight of his competitors and the influence of his council, which ended in a mixed government, then in an aristocracy; or by exciting resistance to his tyranny he occasioned a change of government and the admission of the chief men to a share, sometimes to the whole, of the supreme government. In some cases by slow degrees, in others



by more sudden revolutions, the bulk of the people displaced the select body, and made the constitution Democratical; and sometimes, though in all likelihood much more rarely, the transition was at once made, as at Rome, from the Monarchical to the Aristocratic and Democratic polity.

We may however be sure of one point, Democracy is much more natural to towns or cities than to country districts; and here it may be observed that in general popular governments, either on the Aristocratic or Democratic model, have at all periods of the world been more usually established in the towns than in the country. So it was in old times, when the republic was a town with the neighbouring territory subjected to its citizens, either a select body or the people at large. So it was in modern Italy, as we have seen already (Part II. Chap. XIX. et seq.). But so also to a certain degree it was in the Feudal Monarchies north of the Alps, the civic corporations having much more important franchises and privileges than the inhabitants of the country districts (Part I. Chap. IX. XII. XIX.).

The causes of this difference are sufficiently obvious from the circumstances of the people in the towns. In the *first* place, the wealth which is accumulated in the hands of traders and mercantile men gives rise to independent sentiments and to a dislike of the arbitrary power which places that wealth in jeopardy, and to a sense of personal importance, which leads, by a very direct and very short road, to a desire of sharing the chief power in the state. *Secondly*, the constant intercourse of society in towns has, independent of the wealth and the occupations incident to them, a direct tendency to civilise the inhabitants, and to beget discussions of rights and of policy inconsistent with an entire exclusion from the management of the national concerns. *Thirdly*, the proximity of residence and the daily meeting together, gives to the townsfolk great facilities of combination and of resistance which the inhabitants scattered over the country cannot in any degree possess. As against a prince, each person living alone is wholly powerless, and combination is so difficult, that we see, even in an advanced stage of society, when the towns-people are everywhere combining for their real or supposed interests, sometimes in direct opposition to the interests, real or supposed, of the country people, the latter hardly ever unite, even in self-defence, and can with the utmost difficulty be prevailed upon to manifest

their numerical force in support of measures for their separate interest. *Lastly*, and chiefly, there is a great facility given to holding popular assemblies, and thus allowing the people a just share in the government, when they live together, as in towns, while the collecting of country people is plainly impossible. The whole people of a town may be assembled together ; if the town is not large, the whole inhabitants may conveniently and frequently hold really deliberative assemblies on public affairs—a thing altogether impossible for the people scattered in the country to attempt.

For these reasons it is that we may confidently affirm the superior adaptation of towns to popular government ; and hence the Republican regimen, either Aristocratic or Democratic, has more frequently prevailed in them than in country districts.

## CHAPTER III.

## NATURAL LIMITS OF PURE DEMOCRACIES.

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Limits to Popular Assemblies—Calculations of Numbers—Paradoxes of Authors—Montesquieu, his merits and defects—Two strange Positions of his—Millar, his speculative Errors—True relation of Government to Territory.

As long as the Democratic principle is kept pure, unmixed, and uncontrolled, that is as long as the supreme power is exercised by the whole body of the people, it cannot be applied practically to a large community. In order that the government may be carried on by the people, it may not be necessary that they should perform each act of the supreme or controlling administration, that is, issue the necessary orders to the tribunals, to the tax-gatherers, or to the commanders. This control or general superintendence may be devolved upon a council more or less numerous; it may even be entrusted to a single functionary, or two, as at Rome; and provided they hold their office only for a short period, the democracy is still pure, just as it is pure though justice is administered, taxes collected, and troops commanded, by persons entrusted with these high functions. But the power of making laws and of choosing the administrative council, or functionaries, resides in the people, and can only be exercised by themselves. It is not necessary that they should appoint the judge, the tax-gatherer, or the captain; but they must choose the council or the functionary by whom these appointments are to be made. Then, whether they are to assemble for each act of legislation, and also for each administrative act, or only for the more important legislative measures, and the general administrative superintendence, their assembling and frequently assembling is essential to their retention of the supreme power in their own hands; and they cannot assemble in very large numbers, unless their meeting is a mere pretence,

because the coming together for the purpose of exercising the highest political offices, the making of laws, and the conduct or control of the public affairs, implies great deliberation and the full discussion of the subjects propounded.

If the young men are excluded from such meetings, 13 in 51 of the population being under the age of 20, it follows that of every 100 there must meet 38 ; consequently a district of 20,000 must produce a meeting of 7600 persons, or, allowing for accidental absence, between 6000 and 7000. Such accordingly were the numbers of a full assembly at Athens, and consequently there was rarely any very mature or useful deliberation in the conduct of the business, nor anything like order, even of decorum, preserved. How other provisions in the Athenian constitution, and how habits of procedure, tended to afford some compensation for the evils of this multitude having the substantial control of state affairs, we have explained at large in a former chapter (Part II. Chap. XVII.). But had the meetings been more numerous, it is hard to conceive how any checks could have proved efficacious ; and even if they could, to assemble a greater multitude was physically impossible. Even supposing a place contrived so that 10,000 men can meet in it, this must be admitted to be the very greatest assembly that can be held, because the human voice can reach no further than a certain small distance, and we know practically that there is a great and painful effort required to make a person heard by so many as 10,000. This, according to the above calculation, answers to a population of only 30,000 ; consequently, the utmost extent of territory the government of which can be administered by a pure democracy is one having 30,000 inhabitants, or a town of third or fourth rate. For such capitals as London or Paris it would manifestly be impossible ; but even for Edinburgh or Manchester it would be out of the question, for there the popular assemblies would consist of 40,000 or 50,000 individuals.

All writers who have treated on this subject have agreed, as might be expected, that these considerations affix a necessary, indeed a physical, limit to the extent of a country governed by a pure Democracy. But it could hardly be expected that love of paradox should so have blinded some, and proneness to theory so far have misled others, as we find proved in the works of some very eminent authors. It may be instructive as well as amusing to give one or two examples.

Montesquieu\* gives the reasons why different forms of government are suited to different extents of territory, and why, indeed, these can only exist in territories of such extents. A republic must have a small territory, a monarchy one of middle size, a despotism one of great extent : and to this rule he admits only of one exception, that of the Spanish dominions, for which he accounts by referring to the peculiar circumstances of their position. To pass over the contradiction which this theory at once receives from the examples of Great Britain and Austria, but still more from the despotic governments established in the petty states of Africa on the Mediterranean and Red Sea, as well as in some of the Eastern countries, we may observe, that his doctrine being perfectly true as regards one of his positions, the limit to republican government, his explanation is extremely curious from the care with which he avoids the true reason, as it should seem, merely because it is the obvious and natural one, and because he never can resist the temptation to say what is far-fetched, and striking, and surprising, rather than what is true and near at hand. He assigns three reasons why a republic must have a narrow territory : *first*, because in an extensive country great fortunes are accumulated, and men become independent of the state, and raise themselves on its ruins ; *secondly*, because in a small community each individual feels a stronger interest in the public prosperity, and abuses of public trust become more difficult ; and, *thirdly*, because, if the republic be extended beyond a single town, some chief or prince would endeavour to oppress the people, and would be either dethroned or conquered.

Now, it is difficult to conceive anything more absurd than stepping over the true and plain reason which lay at his feet and before his eyes, in order to run after these three causes, two of which, if they operate at all, work but little to the purpose, and the third seems to have rather a conservative tendency. The true and the plain reason is that which I have assigned, the impossibility of the people acting, that is deliberating, in more than a limited number, and the consequent impossibility of a large community governing itself on the popular model. The reason why extensive empires must be despotically governed is stated to be that firm and vigorous government may supply the want of authority which distance oc-

\* *Esprit des Lois*, liv. viii. ch. xvi., xvii., xix., and xx.

casions. But the instance of the Roman Empire, and the British Empire, and the Venetian Empire, are decisive against this argument, which indeed proceeds wholly upon the gratuitous assumption that no great vigour can exist in any limited form of government. The discussion is closed with a dogmatical assertion, that in order to preserve the three several principles of republic, monarchy, and despotism, it is necessary (he seems to say, only necessary) to preserve the extent of territory suited to each, but that in proportion as this extent is altered, either by increase or diminution, the principles of the government are changed ; a proposition as contrary to the known facts as it is unsupported by any consistent or intelligible reasons.\*

The other instance which I am to take of men being misled by a love of theory, is that of the late Professor Millar, a man of very strong understanding, well disciplined by study, and above all by legal study, though never by having either practised as a lawyer, or borne any share in public affairs. He was, however, in all respects

\* Exception has sometimes been taken to this work as evincing a disposition unjustly to underrate the *Esprit des Loix*. No writer can be himself deserving of confidence who fails to acknowledge the obligations due to Montesquieu's celebrated treatise as having greatly promoted the philosophy of jurisprudence, and, indeed, almost introduced philosophy into the discussions of jurisprudence. But the faults of the work are numerous, and they are great. If it sets a good and valuable example of treating the subject scientifically, it executes the design most imperfectly ; for the main pursuit of the author is certainly not truth. To strike, to dazzle, to fill the ear with epigrams, rather than to instruct, is the great object ; and hence everything is sacrificed to paradox and to point. Some parts of the work—the latter portion—where the Feudal law, and the French law especially, is discussed, present a strange contrast to all, or almost all, the rest, and simply because the author best understood his subject, and, addressing lawyers on practical matters, was in some sort compelled to regard the substance and the truth of his doctrines rather than the glitter or the glare of his sentences. The want of a sound judgment seems to have been the prevailing defect in this able, and lively, and indeed learned author. How could any very sober-minded and reflecting man fall into such gross errors as we find scattered thickly over the book, even when he comes to details, and to individual cases which should at once have opened his eyes to the errors induced by theory ? Thus, in a single book (liv. xx. chap. xv., and xxiii.) we find these two astonishing positions : that a law of Geneva was most admirable which excluded from public office the son whose father died insolvent, until he had paid his debts,—a law of the grossest cruelty and most revolting injustice ; and that a country like Poland, which has only one kind of produce—grain—must be injured, and not benefited, by foreign commerce. Certainly nothing can exceed such revolting absurdity. Perhaps it is a similar instance of unsound judgment that gave us such a chapter as this, entitled “*Moyens très efficaces pour la conservation des trois principes*,” and the whole chapter consists of a line or two, stating that the reader cannot comprehend it until he has read the next four chapters.

a very different inquirer from the French president, and had a mind of a much more vigorous and manly cast, although he was apt to run riot in speculation, as we shall more fully perceive when we come to examine his 'History of the English Mixed Government.'

Mr. Millar, in treating of the Commonwealth in the seventeenth century, disputes the position that Democratic government is only applicable to small states or single towns. He conceives this error to have arisen from attending only to the history of the ancient republics; and he lays it down as clear, that a republican government is adapted to the two extremes of either a very small or a very great nation. By republic he means, as indeed, we have frequently done in this discussion, a commonwealth without an hereditary chief magistrate, or a chief magistrate chosen for life, and therefore a commonwealth, whether on the Democratic model or the aristocratic. The reason which he gives for his position is wholly unsatisfactory; as, indeed, the position itself is contrary to all experience, and at variance with all sound theoretical principle. In a small state, he says, the revenue falling short of half a million sterling is insufficient to maintain a monarchy. How large, then, were the revenues of the Italian and German principalities? and how few of them had anything like the income which he thus deems insufficient? Again, he considers the great revenues of a large empire as so incompatible with liberty, that the people in self-defence must endeavour to overthrow the monarchical or despotic power. We must, however, observe that Mr. Millar avoids the error into which Montesquieu fell, by laying down his theory as one suited to the facts actually existing. Mr. Millar gives his doctrine only as affirming the better adaptation of the one form of polity or the other to the several extents of territory. The only further remark, therefore, which remains to be made upon it is that the growth and existence of so many monarchies and despotisms in small commonwealths, and so many also in large communities, affords a strong presumption against the practical soundness of his reasoning.

We may conclude this discussion with stating the only sound general principle which can be laid down safely upon the relation between the nature of government and the extent of territory or population in any given country. We may safely affirm that a Democracy, on the purest or antique plan, cannot exist but in a

small community ; that an aristocracy may have place in much more extensive countries ; but that governments of every description may exist, and for a great length of time, in a narrow country, and that monarchical and despotic governments may with equal ease continue their existence in extensive countries. The impossibility of the more pure Democracy existing in a community of considerable extent seems to be the only point which fact and reason alike authorize us to consider well established. It is in vain to confine more closely, as Montesquieu has done, one kind of constitution to one extent of territory.



## CHAPTER IV.

## EXTENSION OF DEMOCRACY—PROPER FEDERAL PRINCIPLE.

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Devices to extend Democracies—Three of these—Boeotian Federacy—Lycian Union—United States—United Provinces—Swiss Federacy—Swiss Democratic Cantons.

As the territory or the population of a country subject to Democratic government becomes increased by the conquest or the union of other dominions, the difficulty of assembling the people to consult and determine renders some change in the government necessary, or some arrangement by which, the government remaining the same, it may become capable of administering the concerns of the extended community. Now there will always be a great reluctance to change the government; and although foreign conquest, at once making the Democratic regimen more difficult, and raising some successful captain to an overpowering influence in the State, may occasion the alteration of the former system, and the adoption of a monarchical constitution, this is not by any means the event most likely to happen; and it has, accordingly, very seldom been the result of such an increase in the number of the people as we are supposing. The continuance of the Democracy is more likely to be effected by subdividing the enlarged territory into districts, each of which is of the moderate extent required for Democratic government, and having a central council to control the whole; or, secondly, by uniting the new acquisitions with the old dominions, each retaining its Democratic constitution, and independently and absolutely managing its own internal concerns, but all governed in respect of matters concerning the whole union by a central body; or, thirdly, by excluding the inhabitants of the new acquisitions from all share in the administration, and holding them subject to the inhabitants and the government of the old Democracy. The first plan cannot be said, strictly speaking, to constitute Federal Government; it is rather one polity stretching undivided over the whole community; the

second is Federal Government, strictly so called; the third is an usurpation of power over conquered settlements by a Democracy, and has no affinity to Democratic government, but is in reality a despotism in which the monarch is not one individual, but the people of a commonwealth. The second is what we have in a former chapter termed the proper or perfect federal union; the third is one species of the improper or imperfect federal union—that, namely, in which the control is vested in a central Democracy, and the internal government of the dependencies, as well as the common concerns of the whole union, are in the hands of that central democracy (Part I. Chap. xv.).

Of the two first kinds or subdivisions of the federal union the most commonly adopted has been the second; the first has rarely been established; and of the second, in the few instances which there have been of it in ancient times, we have very imperfect accounts. The principal one of the first kind was that of Thebes, or rather Bœotia, which is, however, generally represented as having been a federal union of the second kind—that is to say, a league of which each member governed its domestic concerns, independently of all the others, and only sent deputies to the general congress or council, which administered the common concerns of the whole confederate or allied body.

Our information respecting this League, and indeed, respecting anything that regards Bœotia, is so scanty, that I speak with becoming caution when I thus venture to represent the constitution of the League as of the first kind. My opinion is grounded, not upon the great preponderance of Thebes over the other ten cities, for that was a feature common to all the Greek confederacies, but upon the peculiarity of the diet or central council being a permanent body, in which each city had one Bœotarch to represent it, and Thebes two, and upon the existence of four councils which prepared the business that came before the diet.\* In other confederacies the diet met only once or twice a-year; and it is inconceivable that the mere affairs common to the whole League, such as questions of peace and war, and alliance, could occupy them permanently and require a constant meeting.—The Asiatic settle-

\* Thucydides, in mentioning the Bœotarchs, speaks of four Councils (*Βουλαι*), and assigns to the Bœotarchs and Councils the *ἡγεμονία*, or supreme dominion, lib. v. 38. There were, according to him, eleven Bœotarchs; but Thebes probably had two, lib. iv. 91.

ment of Lycia appears also to have been governed in this manner ; for its twenty-three cities being represented in a congress by numbers of votes proportioned to their several importance, this congress or diet appointed the magistrates of those several cities, an arrangement wholly inconsistent with the second or more complete kind of the proper federal union.

To this second kind belonged all the other Grecian confederacies, and probably those of ancient Italy prior to the Roman conquests ; but respecting these we have hardly any information at all. The modern federal unions have been of the same description : those of the Dutch United Provinces, the Swiss Cantons, and the American United States.

The great American Federacy was, as we are well aware, established with the design of enabling the democracy the more easily to extend over a vast community, and also to preserve the rights and independence of the several states in their domestic concerns.

In the United Provinces the several members of the union were governed in their domestic affairs by a federacy also, of which the towns were the members, except in Friedland and Groningen, where the country had votes in baillasses to choose the town council. But in every province a central council or body, the Provincial States, resided in the chief town, and administered the concerns common to the whole provincial union, each member of which administered its own affairs independent of all the other towns and of the Provincial States. That central body, the Provincial States, stood in the same relation to the different towns in which the States General stood to the Seven Provinces and their several Provincial States. This certainly affords the most perfect example anywhere to be found of the Federal Union, and it was manifestly contrived for the purpose of enabling communities more extensive than could be governed by a democratic polity to enjoy the benefits of that system. For originally the constitution of these provinces, and of the towns in each, was democratic, the governing bodies being everywhere chosen by the burghers at large. But early in the seventeenth century the councils, with the consent of the people, as it should seem, became self-elected, and the constitutions assumed an oligarchical form. In administering the affairs of these unions, and indeed of each province, great practical inconvenience was always found to result from that provision of the constitution which

gave to each member of the unions, both general and provincial, a *liberum veto*, or absolute negative, upon all resolutions regarding peace and war, alliances, and taxation. This was introduced, like all the other arrangements of the government, by the jealousy common to all democracies.

We have already seen (Part II. Chap. xxviii.) in examining the Swiss Aristocracies, that the Democracy originally prevailing in the three great cantons of Lucerne, Zürich, and Bern was afterwards changed into an Aristocracy of the oligarchical kind, and that the whole country in each canton was subject to the government of the council in the capital. We found, however, that the act of mediation in 1803, and still more effectually the new constitutions of 1814 and 1816, admitted the country districts to a share in choosing the central council; so that the present government in each of these cantons falls within the description to which there is reason to think the governments of Bœotia and Lycia belonged.

But the Swiss Confederacy had members which retained to the end their original Democratic constitution, and have it established to this day. The three small cantons of Schweiz, Uri, and Unterwalden, called the *Waldstätten*, or Forest Cantons, with Glaris, Zug, and Appenzell, have ever been governed upon the most pure Democratic model. The cantons of the Grisons and the Valais, which were formerly only allies of the Swiss Confederacy, but since the new arrangement of 1815 are members of it, have also always had a Democratic constitution, although less purely upon the ancient model than the other six cantons which I have just named. These six formed part of the ancient confederacy, which never assumed so regular a form as the Dutch, having only occasional assemblies of the Diet, a meeting of deputies without officers or funds of its own as a substantive central government. In each state the government is entirely in the people's hands, and none of them are too large to render their meetings absolutely impossible; though as all above sixteen years of age attend, and as Appenzell has fifty thousand inhabitants and Glaris thirty thousand, much larger assemblies than are consistent with convenience are held, sometimes as many as eight thousand attending, nor could anything render them, in Appenzell at least, consistent with the public peace, but the simple habits of a people of shepherds and husbandmen, among whom political dissensions

never have prevailed. In the Grisons and Valais, in each of which there are too many inhabitants for a pure Democracy, a different course has been found necessary, and it is exactly the application of the Federal principle. The Grisons, having eighty-five thousand inhabitants, is divided into sixty districts or cantons, each of which administers its own affairs, like the Dutch towns, and, like them, sends a deputy to the general diet of the country. There is less of a pure democratic spirit and aristocratic influence here than in the Valais, where of the ten districts (or *dizaines*) six are purely democratic, and the people entirely govern themselves. The other four are aristocratic. All the ten are represented by deputies in the Diet; and the Diet of both Grisons and Valais send deputies to the central federal body. Thus each valley in these two cantons has its separate popular government, generally on the Democratic model, and the whole are ruled by a central diet, which again is represented in the General Federal Council.

Having in a former chapter (Part I. Chap. xiv.) discussed at length the subject of the Perfect or Proper Federal Union, and having in another chapter (Part I. Chap. xv.) discussed the subject of the Improper or Imperfect Federal Union, it is unnecessary to enter into that inquiry in this place.

## CHAPTER V.

EXTENSION OF DEMOCRACY—IMPROPER FEDERAL PRINCIPLE—  
ROMAN POLITY.

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Roman Provincial Polity instructive—Conquests kept subject—Provincial Government—Subjection of Inhabitants—Their partial admission to privileges—Municipia or free towns; their Government—Colonies—Oppression of the Provincials—Social War—Admission of all Italy—Exclusion of Cisalpine Gaul—Exclusion of Provinces relaxed under the Empire—Universal admission of the Provincials—Elective Measure of Augustus—Influx of Provincials into Rome.

THE Roman polity was framed upon the third of the plans which have been mentioned; they reduced the government of the capital to an aristocracy which enabled the rulers to conduct its affairs without constant appeals to unwieldy popular assemblies; and the capital, the city itself, and the district in its immediate neighbourhood, governed the provinces in Italy, and the foreign dominions of the Republic, without giving any share whatever of the supreme power to the inhabitants of those provinces, or suffering their voice to be heard in the choice of the functionaries to whom the government of the whole was entrusted. It is exceedingly instructive to examine narrowly the Roman provincial policy, because it shows to what various devices the Republic was driven in order that it might be enabled to extend its dominion, while its constitution remained unchanged. It also illustrates in a striking manner the grand difference between ancient and modern policy, introduced by the happy contrivance of representation.

When the Romans conquered any portion of the neighbouring territory, and gradually in the course of five centuries overran all Italy, they found a rude form of government established among the inhabitants, who either lived under petty chiefs or under a republican constitution, and, generally speaking, formed confederacies or unions, each town retaining its independence in all its domestic administration, but several joining together under a

common chief, or common council, in all that regarded alliances and warlike operations. The number of troops which some of them, as the Samnites, could bring into the field, 80,000 men (Part I. Chap. xiv.), manifestly shows that they must have lived under a federal government. The first thing which the conquerors did upon overpowering any league was to destroy this union altogether, allowing no councils nor any assemblies whatever of the people to be in future holden. They permitted no alliances, of course, to be formed with other tribes; and they strictly prohibited even the intermarriage (*connubium*) of the inhabitants of the conquered district with those of any other. If the people were sufficiently advanced in civilization to have any public lands, the domains of the prince or of the state, these became the property of the Roman Government; and, beside these, a considerable portion of the lands in private tenure was confiscated. The lands thus acquired were parcelled out among poor citizens of Rome, or given to colonies of Romans, planted there for the purpose of overawing the natives. The state derived no revenue from such lands except in Campania, having very early given up all right to rent from either colonists or paupers. The only direct tribute imposed upon the conquered people was a tax of one-twentieth on the sale of all slaves; for slavery in Italy, as everywhere else in the old world, was universally established. They were allowed to retain their own laws, their own form of government, and their own magistrates. No governor was sent from Rome; nor did the consuls and senate exercise any authority except in matters of peace and war, and alliances. Within this exception came the important article of troops, which were furnished for all the wars of the Republic, and were paid,\* as well as raised, by the conquered districts. It is agreed on all hands that at first the yoke thus imposed was not a heavy one. The politic Romans, while they were carrying on so many wars, felt the necessity of conciliating the people of their successive conquests. It was not till the sixth century A.U.C., and after the successful termination of the Second Punic War, when all Italy had been completely subdued, that the oppressions of the crafty and cruel conquerors began to be universally felt all over their dominions.

\* This consideration, as Beaufort well observes (Rep. Rom., liv. vii. c. i.), explains the passage in Livy (lib. viii. c. viii.), where he calls the Latins *stipendiarii*.

The inhabitants of the conquered districts were considered by the haughty Romans as an inferior race, and were excluded from all the privileges of Roman citizens. They were not allowed to intermarry with Romans, nor to dwell in the city, nor to hold any offices, nor to have any voice in elections, nor to enjoy any intercourse of sacred rites. Even the numerous levies which they furnished to the army were marshalled in separate and auxiliary legions, not incorporated with the Roman troops. Such was the general rule ; but after the Gallic invasion an exception was made in favour of Cære, whose inhabitants had rendered important services in that disastrous campaign. About the year 363 A.U.C. they were admitted to a certain portion of civic rights. The privilege of voting, however, or of filling offices, was withheld. The admission to civic rights of foreigners, or barbarians, as the barbarous Romans were pleased to call them, being once begun, was extended to other cases. Ten years after the Cerites, the Tusculans were admitted. In 415 A.U.C. Aricia, Lanuvium, and some others, were admitted, with the right of voting ; and, therefore, of being enrolled in tribes and centuries at Rome : while some towns, as Fundi and Cumæ, admitted to citizenship in the same year, only obtained the suffrage in 565. The Sabines were partially admitted in 463, and completely in 485. When the suffrage was conferred, the voters were dispersed over various tribes, in order to neutralise their influence. Thus the nine towns of the Veneti were enrolled in nine of the tribes.

But all the privileges thus granted were confined to particular provincial towns. No district, except a portion of the Latins, enjoyed it generally ; and these Latins always had greater privileges than the other Italian states, even after civic rights were generally extended. The colonies planted among them were governed by their own, and not by Roman magistrates ; they had a community in certain religious rites with Rome ; they always had the suffrage after holding any Latin office. The rest of the Italian nations were treated altogether as aliens, with the exception of the towns enfranchised or naturalised, as has been mentioned, and with another important exception, that of the free towns or *municipia*. These varied in the privileges granted ; some having the whole, others only part of the rights of citizens ; some having their own laws, with only the addition of those portions of the Roman law which governed marriage, wills, and contracts ;



others being wholly under the law of Rome.\* They generally framed their government upon the Roman model, changing the names of their functionaries. Thus their senators were termed *decuriones*, their consuls *duumviri*, or *quatuorviri*; their censors *decemviri quinquevires*; their tribunes *defensores publici*. They had three orders like the Romans, senators, equites, and plebeians. In many of them the officers were elective, and the people assembled in comitia to choose them as well as to adopt or confirm the laws which were propounded.

The colonies were planted by Roman citizens, and continued under magistrates sent from Rome, except only those in Latium, which chose their own. The colonial inhabitants, however, ceased to enjoy any votes in the capital, or to be capable of holding any offices there. They were governed entirely by the Roman law, and appear to have been regarded as citizens in all respects, except the suffrage and holding of magistracies. The policy of planting these colonies as advanced posts to maintain their conquests was early adopted by the Romans, and continued to the end of the empire. Fidenæ, one of the first planted, was not above five miles distant from Rome. Before the sixth century they had planted fifty-three establishments of this kind in Italy.

With these exceptions, manifestly introduced for the purpose of strengthening the Roman dominion over the conquered nations, no Italian people enjoyed any Roman immunities or privileges whatever; all were treated as a conquered and as an inferior race. This treatment they bore for two centuries after the whole of Italy had been subdued. They had served in the Roman armies the whole of this time, and afterwards in their foreign conquests. They had formed the great bulk, indeed, of those armies; for in the year 528 we find that of the whole force, 700,000 infantry and 80,000 cavalry, only 250,000 of the former and 25,000 of the latter were Roman. Yet the treatment they received before Italy was subdued had been mild, compared with the cruelties and insults to which they were afterwards exposed. Roman magistrates in their progress through those countries set no bounds to

\* Those which retained their own jurisprudence sometimes partially adopted the Roman law of their own free will; and if they did, the municipality was termed *fundus*,—*quoad* the law so adopted. Certain portions of the Roman law all were compelled to adopt (those, namely, mentioned in the text) on obtaining the *civitas*.

their insolence and their exactions ; the most respectable inhabitants were treated with gross indignities at the caprice of those tyrannical republicans : their public functionaries were sometimes flogged in the presence of the multitude ; to punish some imagined neglect, a whole state or kingdom was confiscated ; even private individuals, proud of the title of Roman citizen, have been known to flog a provincial to death on the highway for some real or imaginary want of due respect towards the sovereign people. This tyranny, all springing from their inferiority as being excluded from the rights of the state, the Italians bore for centuries, and at length revolted. They joined in by far the most formidable league ever formed to curb the haughty republicans ; and bringing an army of 100,000 men into the field they threw off the Roman yoke, forming themselves into a great confederacy, the capital of which was Corcova. An edict of the consuls Crassus and Scaevola, A.U.C. 658, was the immediate cause of the revolt. It expelled all Italians as well as other strangers from Rome, unless such as had obtained the rights of citizenship (*civitas*). The allies were successful during the first of the two years that this social war lasted, even by the confession of the Roman historians, from whom alone we have any accounts of its events. Rome was compelled, for her own safety, to grant the rights of citizens to all the states which had remained firm in their allegiance ; and the contest was only terminated, notwithstanding the better fortune which is related to have attended their arms the next year, by extending the privileges to all who would receive them. The Lucanians and Samnites were excepted by the Romans, according to the Roman account ; the probability is that they refused the proffered terms ; however, in 670, they too were comprehended.

The whole of Italy, that is, all to the south of the Rubicon on the one side, and the Arno on the other, was now comprehended in the Roman state. The inhabitants were enrolled in tribes and centuries ; they voted ; they could hold office ; they were admitted to the games ; and they could intermarry with Romans. Cisalpine Gaul had for a long time ceased to be regarded as part of the Italian territory ; it was reduced in all respects to the condition of a province, or rather of two, the cispadane and transpadane, or Gaul on either side of the Po. The rights of the city were not extended to these provinces for many years after the

rest of Italy had been naturalised ; Julius Cæsar, in 705 A.U.C., completing their admission.

The provinces were treated in a far more harsh manner than the Italian states, even in the latter period of their alienage. They never were at any time deemed allies (*socii*). Their own government was abolished, and Roman magistrates administered all their affairs. The senate exercised absolute power over them and made laws for their government ; and although some of their old laws might be allowed to remain in force, yet the Pro-Prætors published their edict or code of laws on entry upon office, as the Prætors did at Rome.

In proportion as liberty declined at Rome, and the rights of the people were disregarded, the scruples became naturally diminished about extending the privileges of the city ; and the emperors even might desire to have supporters in whom they could confide when tyrannizing over the citizens of the capital. Julius Cæsar introduced the practice of granting civic rights to the provinces ; he began with Cadiz and other towns in Spain, making them, however, pay largely for the privileges bestowed. Mark Antony extended a portion of the same rights to Sicily, but withheld part, and exacted large sums for what was given. It was the advice of Mæcenas that Augustus should admit the whole empire, with a view to secure efficient support from the attachment of the provincial subjects. That wily sovereign, however, held a different opinion, and did not concede the right indiscriminately. His successors pursued various plans, generally making the gift a source of gain to themselves. At length Caracalla extended the right to the whole subjects of the empire.

It appears manifest that the rights thus gradually acquired by the inhabitants of part of Italy and part of the provinces could not materially interfere with the power exercised by the citizens of the metropolis, at least during the existence of the Republic ; for none of those rights could be exercised without removing to Rome. Augustus, indeed, introduced a great change in the manner of voting, by allowing the non-resident voters to enter their suffrages with a magistrate, who transmitted them in writing to Rome ; a change which would have produced the greatest alteration in the administration of affairs had it been earlier adopted, but which there was no chance of any one venturing even to propose as long as the people retained their influence, that is,

as long as the franchise was of any value. Nor can we doubt that this remarkable measure of Augustus was resorted to in aid of his endeavours to check the corruption that prevailed at the Roman elections (Part II. Chap. XIII.). After his time there was nothing like even the name of election at Rome, and the scene of bribery and corruption was now transferred or confined to the provincial towns and colonies, where offices were still filled by popular choice.

That a great concourse of strangers, both Italian and foreign, constantly thronged the capital cannot be doubted ; and the extension of the civic rights tended somewhat to increase this influx. In earlier times, and when only parts of Latium and some of the towns had the franchise, we find alarm excited at Rome by the number of Latins flocking thither. Twelve thousand are said to have been summarily ordered to leave the city in the year 550 ; and, as a further check, those Latins only were permitted to reside at Rome who had left children in their own country. But the near neighbourhood of their home much more than the exercise of civic rights was the cause of this influx ; and the silence of historians as to any similar inconvenience having ever been experienced from the concourse of more distant people, as well as the fact of no such precautions having been taken for removing their inhabitants, sufficiently proves that few used to visit the capital in order to exercise there the suffrage which they had acquired.

## CHAPTER VI.

## EXTENSION OF DEMOCRACY—REPRESENTATIVE PRINCIPLE.

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No Representation in ancient times—Representative and Federal Principles distinguished—Examples, ancient and modern—Definition of Representation—Definition illustrated and proved—Representatives must be free—Historical Illustrations—England, old Writs; France; Sicily; Scotland.

IN all these attempts to extend the range of Democratic government, and enable it to embrace a larger territory, it must be carefully kept in view that there was nothing whatever of Representation. There was choice, there was election; the people selected a functionary, and appointed him as their delegate, that is, as the delegate of the whole community, to act for it in the convention of delegates from other similar communities. He was to declare their particular will, and not to consult for the good of the whole. Each member of the federal union was heard by its delegate, as if it had been heard by itself. He was like an ambassador sent to treat with the ambassadors sent by other states. He was not a representative sent by one portion of a community to consult with the representatives of other portions of the same community, and to devise the measures best adapted for securing the interests of the whole. On the contrary, he was an agent commissioned to watch over the separate, independent, and possibly conflicting interests of his principal. In some sort the interest of the whole union was to be regarded, because it was the interest of the part which sent him to preserve the existence of the whole. Mutual protection, the origin of the association, implied mutual aid, and, to a certain degree, mutual sacrifices for the safety of the whole. But in no other sense had the delegate a truly representative character. This is the first and leading distinction between the ancient and the modern principle.

. The other distinction is hardly less important. The general

council, or Diet, had no concern whatever with the internal administration of the states which were represented in it. The only subjects of its deliberation were those matters which concerned the mutual intercourse of the different states, and their common interests with respect to foreigners, to other states, or other confederacies. Each state was sovereign and independent within itself, and administered exclusively its own affairs. Nothing can more than this show how entirely the delegates must be considered as mere agents or ambassadors, how different their functions were from those of representatives, how completely the government of the whole federacy differed from a representative government. The utmost that can be said is, that the union was representative *quoad hoc*: representative as far as the international relations of the different members, and the common relations of the whole with foreign powers, were concerned. In the same sense, ministers sent to a congress of the European powers may be said to represent the different states in settling international questions and questions regarding other powers not admitted to the congress.

The Representative principle, the grand invention of modern times, is entirely different in both these essential particulars. It consists in each portion of the same community choosing a person to whom the share of that portion in the general government of the whole shall be intrusted, and not only the administration of the affairs of the whole as related to other communities, or the administration of the affairs of each portion in its relation to other portions of the state, but the administration of all the concerns whatever of that separate portion.

Thus, the delegate from Thebes, or the Bœotarch as he was called, being probably a lord, the chief magistrate in his quality of the deputy to the Diet, only represented the interests of Thebes in that Diet, and he only consulted there respecting the relations between Thebes and the other Bœotian cities, or respecting the relations of the whole Bœotian union with foreign states, as Athens and Sparta. He had no power to treat of any matter concerning the internal government, the domestic affairs of Thebes, any more than of Athens or Sparta. But the delegates from London to the British Parliament, or from Paris to the French Chamber of Deputies, are authorised to consult not only respecting the relations of Paris with Marseilles, and of London with Liverpool, or

of all England with America, or all France with Spain, but they have exactly the same authority to consult and enact respecting the police, the magistracy, the civil rights, the criminal laws, of London and of Paris.

The difference here stated between the Federal Delegate and the Representative does not depend upon the way in which we may regard a representative's duty with respect to the instructions of his constituents, or with respect to the interests which he is bound to consult. Whether he is to obey the instructions of those who choose him, or to follow the course indicated by his own judgment; whether he is to regard himself as representing those who elect him, or the whole state; he is still vested with an authority, and exercises functions different, and different in kind, from those of the delegate to a federal congress. The matters respecting which he is to consult, and on which he is to decide, are specifically different from those which fall within the delegate's competence. They include the latter, but their most important branch is foreign to the commission of the delegate. That commission, too, is in its nature somewhat occasional. When a treaty is in agitation, when hostilities are in contemplation or in progress, when any dispute has arisen between members of the Federacy, then the functions of the congress come into active exercise. But the duties of the representative, comprising the administration of internal affairs, the affairs of every portion of the community, of each state in the league, are constant and not occasional. If, indeed, the congress of a federal union had the power of legislating for each of its members added to its proper office of deciding among them, and of representing them all with foreign states—then, indeed, there would be a close resemblance between the Congress and a Representative body; but the union would cease to resemble that of the Federacies either in ancient or modern times.

We may observe another difference not immaterial between the two systems. The modern representative is chosen and appointed merely as such; his only capacity is representative. The ancient delegate was probably in all cases a magistrate, generally the chief of the state who sent him. He was elected to rule that state at home, and he acted for it in the congress, as the sovereigns who attend our modern diplomatic congresses act for their own states, or send their ambassadors to represent them and act

for them. He represented the local sovereignty in the general council. The representative represents no sovereignty or power residing among or ruling over his constituents; he represents them as speaking for their interests, in one view of his duties—as consulting for the interests of the whole community, in another view of these duties.

The essence of Representation, then, is that the power of the people should be parted with, and given over, for a limited period, to the deputy chosen by the people, and that he should perform that part in the government which, but for this transfer, would have been performed by the people themselves. All these several things must concur to constitute representation.

1. The power must be parted with, and given over.—It is not a Representation if the constituents so far retain a control as to act for themselves. They may communicate with their delegate; they may inform him of their wishes, their opinions, their circumstances; they may pronounce their judgment upon his public conduct; they may even call upon him to follow their instructions, and warn him that if he disobeys they will no longer trust him, or re-elect him, to represent them. But he is to act—not they; he is to act for them—not they for themselves. If they interfere directly, and take the power out of his hands, not only is the main object of Representation defeated, but a conflict and a confusion is introduced that makes the Representation rather prejudicial than advantageous.

2. The people's power must be given over for a limited time.—This is essential to the system. If the delegation be for ever, allowing the deputy to name, or to join with others in naming his successor, or even if he be continued for his life, and the constituent name his successor, the virtue of the system is gone, and the body of representatives becomes an oligarchy, elective indeed, but still an oligarchy and not a representative body.

3. The power must be given over for a limited period to deputies chosen by the people.—This is of all others the most essential requisite. If any authority but the people appoint the deputies, there is an end of representation; the people's power is usurped and taken from them, and instead of having any concern in making the laws that are to govern them or in administering the affairs of the state, some other power legislates and rules



over them, and in spite of them, although it may add insult to injury by the mockery of pretending to govern in their name.

4. Finally, the representatives are to perform that part in the government which would otherwise have been performed by the people.—They are to administer the local as well as the general concerns; they are to govern each part as well as the whole. But they may have a greater or a less share in the government without its ceasing to be of a representative nature. That would be in the strict sense a representative constitution in which the people's deputies were circumscribed in their authority; in which, for example, a prince or a patrician body had the sole right of propounding measures, or in which all control of the public purse was left to the patrician body, or in which all patronage was vested in the sovereign. The extent of the powers vested in the deputies of the people is immaterial to the question whether these be a representative body or not, provided that the deputies come in the people's place. If the democracy was pure, the substitution of representatives makes those representatives absolute while their authority is unrevoked. If the government was mixed, either by the addition of a sovereign or of an aristocracy, or both, the substitution of representatives gives them a portion of the government, which continues mixed still.

It may perhaps be supposed that this representation is of two several kinds; as the representative, it may be said, either has the discretion of deciding and acting according to his own judgment, or he is bound to decide and to act according to the commands of his constituents; and some may suggest that the one of these is a proper or perfect, the other an improper or imperfect kind of representation. But I conceive that this is altogether an incorrect view of the subject, and rests upon a misapprehension of the representative principle. If the deputies are mere delegates sent to do as their constituents direct, their appointment can hardly be said to vary the constitution from what it was before; the power is still in the people's hands, though executed by an agent. Besides, nothing can be more inconsistent, or indeed more absurd, than for men to meet in order to vote as they have been ordered; nor can anything be more preposterous than for those men to be selected with care in order to perform this mechanical task. It is not of the least importance who are chosen for the

purpose. Nay, it is not of the least importance by whom they are chosen. Men appointed by any other power in the state would be just as capable of giving the prescribed votes as the representatives the most carefully selected by the people themselves. The importance is transferred from the proceedings of the deputies to the proceedings of the constituent bodies. The whole government of the state depends upon what passes in the local assemblies, not upon what is transacted in the council of the deputies. When those local assemblies have resolved severally on any matter, the decision of their representatives is a mere ceremony, and a useless ceremony. There is no occasion for them to meet at all. A clerk receiving the instructions and publishing the result would be quite as good as the operation of taking the votes. Nay, a mere publication of the results of all the local meetings held to instruct the deputies, would enable any person to ascertain what the determination had been.

Nor is there any medium between this state of things which makes the whole mechanical and the representative character a mockery, and the state of things which I have described as constituting the definition of Representative Government. Some have with little reflection maintained that a general discretion may be given to the deputy, but that on occasions of extraordinary importance he must obey the instructions of his constituents. Who is to determine what is and what is not an important occasion? Do we not know that the important measure always means the present measure, and that the people ever give that name to the matter in hand, ever confine their attention exclusively to the affair of the day? Besides, suppose we had any test of relative importance, the very occasions of highest moment are precisely those upon which it is the most inexpedient that the direct interference of the people should be allowed. The virtues of the representative system, as we shall presently see, most chiefly consist in the discretion being transferred upon such occasions.

The whole history of the representative principle proves the soundness of the doctrine for which I am contending; it shows that the vesting an entire discretion in the deputy is an essential part of the definition. Both in England and on the continent the original form of the states was a council of the sovereign, composed of his feudal vassals, and convoked to aid him in his government

with their local knowledge, or to render their assistance in his wars more hearty, or to receive his edicts and laws, published by his promulgating them at their assembly. The deputies of towns in those kingdoms, especially in England and France, were, after some ages, summoned in order to facilitate the raising of taxes from the trading classes. Yet the writs of summons which we have, both to the town deputies, when they were called, and to the country deputies, when the lesser vassals sent representatives instead of attending in person, always indicated that much more was to be done than the mere delivering of the votes as by the envoys or agents of the electors. The famous writ of Simon de Montford (1264) in Henry the Third's reign, summoned from each county two knights "*de legalioribus et discretioribus*" of the county, and from each city and burgh two citizens or burgesses "*de legalioribus et discretioribus et probioribus*," of the citizens and burgesses; and those assembled were to treat and labour and consult with the king on the most important concerns of the realm, some of which are set forth in the preamble.\* So the writ of 23 Ed. I. (12) requires to be chosen two burgesses "*de discretioribus et ad laborandum potentioribus*."† In some writs the term used is "*idonei*;" in some it is "*de sapientioribus et aptioribus civibus*," as the writ 11 Ed. I. to cities and burghs.‡ The writ summoning the Sicilian parliament, in the same age (1240), required Syndics (Mayors) to be sent "*de melioribus et magis sufficientibus*" (Part I. Chap. xvii.). We shall presently see (Part III. Chap. vii.) that the older Frankish summons required the Counts to be attended by the "*meliores homines comitatus*."

In other countries the origin of representation is lost in obscurity, and the law establishing it being no longer known, we are obliged to collect its provisions from the tenor of the writs issued under them. But in Scotland the statute remains which first called to parliament the representatives of counties in James the First's reign, 1427. The freeholders are to choose "two or more wise men, with power to hear, treat, and formally determine, and to choose a speaker" (Act 1427, c. 102). All these qualifications required of the deputies, and the functions they were called to perform, are wholly inconsistent with the supposition that representa-

\* Parl. Writs, i. 16.

† Rym. Fœd. 1802. Parl. Writs, i. 29.

‡ Parl. Writs, i.; and see Brady, 155.

tives were originally commissioned merely to deliver a message, or act according to the will of their constituents, or give the vote of those constituents in the assembly. Discretion, ability to transact business, probity, respectability, station, and fitness, were manifestly quite immaterial in a person deputed merely to put in the votes of those who sent him ; and the terms consulting, hearing, treating, determining, convey anything rather than an idea of this simple and mechanical function. We may therefore most confidently conclude that the exercise of discretion is essential to the representative character, and that the assembly of deputies is in its nature strictly a deliberative body.

Hence I apprehend it to be clear that the definition above given of Representation may be relied on as strictly correct. It is the people parting with and giving over their power—for a limited period—to deputies chosen by themselves—those deputies fully and freely exercising that power instead of the people.

## CHAPTER VII.

## ORIGIN AND HISTORY OF REPRESENTATION.

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Near approaches of the Ancients to Representation—Feudal Councils—Franks; Saxons; Spaniards; English Heptarchy—Gemotes—Origin of English County Representation—Errors of some authors—Admission of Town Representatives—Evidence from Statutes—Evidence from Writs—Towns attended to be taxed—Town Representation derived from County—Royal demesne Towns first represented—Scotch Representation—Early Scotch Statutes—Difference of Scotch and English Parliaments—Irish Parliament—French Councils and Estates—English Controversy.

It is certain that although the commonwealths of ancient times had not in any part of their political system the representative principle, yet they made so near an approach to it as leaves us in some wonder how they never should have made this important step in the art of government. The delegation of persons to a federal council, and the assembly of the Amphictyons (Part I. Chap. xv.), might easily have suggested the idea of choosing men to represent the whole people in administering the internal affairs of any given state. Indeed the election of magistrates, though apparently less like representation, is in reality more akin to it; for the powers of executive government are given over by the people to the functionaries chosen. This was necessary, because of the impossibility of a whole people exercising these functions. If, then, any of the old republics had been so extensive as to make assemblies of the people impossible, it is likely that the expedient would have been adopted of delegating the legislative functions to a smaller body. At Athens there were smaller bodies, chosen by lot, to exercise certain branches of government, not only judicial branches, but political, the senate being a select body thus chosen. Had the selection been by choice, and not by lot, this senate would have been a representative body. The extreme jealousy of the people, and their alarm lest any oligarchy should be introduced, prevented the elective principle being applied to the appointment of any powerful body. The blind hazard of the lot was deemed the only security against cabal, and intrigue, and individual ambition.

When the feudal system was introduced into Europe, and the provinces of the Roman Empire became monarchies of a peculiar structure, unknown in ancient times, the barbarians who had overrun the provinces found no political institutions beyond those of an absolute despotism; but they brought with them a practice of restricting the chief's authority, as well as aiding him in his plans, both of peace and of war, by the council of his principal followers. Out of this practice arose the custom of assembling the great men, whether lay or clerical, on important occasions, and afterwards at stated periods, generally on the continent twice a year, at spring and fall.

The Saxon nations were more attached to liberty, and gave their princes less power than the Franks, who founded the French monarchy, and the Normans, who afterwards obtained possession of a portion of France. The extent of the Saxon conquests gave their military chiefs greater authority when their dominions were enlarged than they had ever enjoyed when their possessions were more limited. In this island their institutions partook of the more ancient and free system; while in the south the royal authority was more arbitrary and uncontrolled, except in the Spanish Peninsula, where it was most restricted. But in all the feudal kingdoms, both before and after the complete establishment of the system, there were meetings of great men who assisted the sovereign, and who, in some sort, also set bounds to his power.

In England, under the Heptarchy, these assemblies are by some supposed to have been held as of the people's right, to whom the sharing of the supreme power between the king and the principal men was thought to afford a protection for their liberties. In the continental kingdoms, with the exception of Spain, the assemblies were rather convoked by the sovereign for his own benefit; and he thus both received local information from those who attended living in various parts of the kingdom, and obtained also their concurrence in any warlike operations for which he might be preparing (Part I. Chap. XI.). But the constitution of these assemblies, both before the feudal system was completely established, and for some time after, was nearly the same in this island, and in all parts of the continent. There was nothing resembling an elective representation of any class in the country.

It seems well ascertained that those assemblies, called by the

Saxons *Mickle-gemotes*, or *Witenagemotes* (Great Assemblies, or Assemblies of Wise, that is Considerable Men), were attended only by the allodial proprietors—that is, by the persons who owned land without any condition of service for it, either to the king or to subject. It is probable that not even all proprietors of this class attended, but only the more considerable ones; and we are left uncertain if they had a right to attend, or if they only came on the summons of the prince. When the Saxon Heph-tarchy was united under one monarchy by Egbert in the ninth century, we can have no doubt that a general gemote was held for the whole kingdom, in place of the Saxon gemote formerly held. Those who attended the gemotes were called *Witan*, literally wise or respectable men. The vassals were not deemed sufficiently independent to attend; and the peasants were in a state of villeinage. The only distinction between man and man was the possession of land, and the holding it free, or by rendering service to another. The landowners and nobles (*Magnates* or *Proceres*) were, therefore, the same body.

When the Conqueror obtained possession of England, he continued the Saxon practice of summoning councils, now called, from the Norman, Parliaments, to which, moreover, he was accustomed in Normandy; and during the earliest of the Norman reigns they were composed in the same manner. But soon after the Conquest a practice was introduced which appears to have afterwards been attended with important consequences. The king commissioned knights in each county to inquire respecting the local customs, the abuses of the law, and the other grievances of the subject. It is probable that the *Missi Dominici* of Charlemagne gave the idea of these commissioners (Part I. Chap. xv.). These knights were sometimes named by the king, and sometimes chosen in the county court—that is, by all the freeholders assembled under the viscount or sheriff. Occasionally the same device was resorted to in order to collect subsidies. Justices in Eyre (*in itinere*) were commissioned to obtain these, and sometimes knights were added for each county. From this practice we may easily conceive that another became likely, the summoning so many knights to the general council, called the Colloquium or Parliament since the Norman Conquest, and which, as we have seen, succeeded to the Witenagemote. Accordingly, on one

occasion we find the king summoning (1213) four knights for each county to meet him at Oxford, and discuss or treat with him (*ad agendum nobiscum*) on the state of the kingdom. John had at this time quarrelled with his greater barons, and he probably thought he could obtain favour and support from the freeholders at large. In Magna Charta a provision was introduced requiring the king to summon to parliament each prelate and greater baron individually by his own letter missive, and to summon the lesser barons through the sheriff and viscount.

The numbers of the Saxon gemote most probably diminished considerably before the Conquest; for although it be true, as Mr. Millar contends (*English Government*, i., 219) that landed property became in the course of time much divided, it is equally certain that allodial property was daily diminished in amount by proprietors feudalizing it for the sake of obtaining protection under powerful lords, in that distracted state of society (Part i. Chap. VIII., IX.). In the Conqueror's parliament the prelates and the barons who held of the king *in capite* were in all probability the only members, and continued such for the next four reigns. Nor was the plan for that long period of time introduced of the lesser barons sending some of their members to represent the whole. They did not, indeed, attend in person willingly; but they were frequently required by the king to appear; and their aid in counteracting the influence of the greater barons was a powerful motive for requiring them to perform this branch of the feudal duty, of the service due from them to the sovereign under whom their lands were holden.

It is, however, certain that each prelate and baron could, if absent himself from just cause, appear by his procuration or proxy. A Mercian charter which is extant has by its mention of proxies misled many political reasoners, and made them most erroneously contend that, as early as 811, there were representatives of the boroughs, because the charter purports to have been granted in the assembly of the prelates, barons, magnates, and *procurators*. It is judiciously remarked by Mr. Millar that the placing this in juxtaposition to magnates shows their proxies to be signified by the term. The mention made of an assent or applause by the multitude to whom the laws or resolutions taken in the parliament or gemote were proclaimed, clearly proves nothing more than that they were present as spectators. Indeed the



silence of all the older historians and chroniclers, as well as of all the writs in those days, seems decisive of the question; and when we recollect that the local inferior courts of the shire, the hundred, and the tithing, were all composed of the landowners, as we know from the laws of Henry I.,\* there can be no doubt that the general and superior court of parliament was constituted in the same manner.

The body of tenants *in capite* who owed this service of attending the king's council or parliament was not very numerous. By Domesday-book it appears that in the time of the Conqueror they did not exceed 605, including about one hundred and forty ecclesiastics. Of the lay barons nine-tenths must have been the lesser or common freeholders, who were summoned through the sheriff and without special writs, leaving not above forty or fifty of the great vassals. At what precise time or by what steps the attendance of the more numerous body, the lesser barons or common freeholders, was commuted for their choice of two of their number in each county, as representing the whole, we are unable to ascertain. That it must have been before the year 1264, seems clear; for the writ of Simon de Montford in that year directs the sheriff of each county to return two knights; and it can hardly be supposed that he would have loaded his usurpation with the additional odium of only summoning two of the freeholders in each county, had this been an innovation. The argument used by some, that we have no trace of any similar writs between that time and the 18th of Edward I., really proves nothing; for the general writs of summons are equally wanting, and that parliaments were repeatedly holden during that interval, and some of the most important statutes ever made were passed, we know for certain. The writs in 18 Edward I. are extant, and they command the return of knights for each shire, by election (*eligi facias*), to come with full power to consult and treat with the greater barons. Representation of the freeholders or counties was, therefore, at least as early as 1290, fully established, but in all likelihood half a century before; and the step which led to it was probably the appointment of knights as royal commissioners, sometimes chosen in the county courts, in the way already stated.

\* LL. Hen. I., ch. vii., and Laws of England, vol. ii. Published by the Record Commissioners.

The admission of the townsfolk to any share in the proceedings of parliament was a yet more important step. The representative principle had been introduced, but it was only applied to relieve the freeholders from the burthen of an attendance which they had from time immemorial given as a necessary part, first of the gemote, then of the parliament. The citizens had never attended in any way. But whether De Montford thought it would serve his purpose to call them in, by letting them choose two of their number like the freeholders, or whether it had some years before been usual to admit them for the purpose of obtaining the more ready assent of the towns to the payment of subsidies, we are not precisely informed; and the question has produced very warm controversy. To me it appears that the evidence of probability preponderates in favour of the position that De Montford first summoned the boroughs, and that for twenty-five years afterwards his precedent never was followed. The principal ground of this opinion is the evidence afforded by the statutes themselves.

Let us ask now how the parliament is described after Simon de Montford's writ in 1264. The answer certainly is, at first not otherwise than before the meeting so by him convened. The Statute of Merton (20th Henry III.) purports to be made by the king in the assembly of the prelates, earls, and barons, and the provisions made three years after (43rd Henry III.) are said to be made by the king and his magnates. The Dictum de Kenilworth 51 (2nd Henry III.), soon after De Montford's parliament, purports to be made by the king and his barons and counsellors; the Statute of Marlebridge next year by the king and the more discreet men, both greater and lesser—that is, clearly the greater and lesser barons. The well-known Statute of Westminster 1st (3rd Edward I.) purports to be made by the king, the prelates, earls, barons, and commonalty (commune), but it is to be observed that the proclamation for its observance only states it to have been made by the prelates and magnates (Stat. of Record Com. i., 89). The Statute De Bigamis (4th Edward I.) only mentions the king, the prelates, and his council. The Statute Rageman uses the same form, omitting the prelates. The Statute of Gloucester (6th Edward I.) mentions the discreet men, greater and lesser; the 7th Edward I., De Religiosis, is by the king and his council; and so is the Statute of Acton Burnel, 11th Edward I. The famous Statute de Donis, or Westminster 2nd (13th Edward I.),

is by the king, prelates, barons, and council ; the Statutes of Winton and *Circumspecte agatis* only mention the king ; and that of *Quia Emptores*, or Westminster 3rd (18th Edward I.), mentions only the magnates with the king. The Statute of *Quo Warranto* (18th Edward I.) merely states that it was made at a parliament (20th Edward I.). But whether the burgesses were present in these two years we are not informed. In the 25th Edward I., however, 1297, their right to be present is fully recognised ; for they are named with the knights and magnates as constituent parts of parliament (Statute de Tallagio). As the Statute of Fines (27th Edward I.) mentions only the council ; and that of false money, the same year, the prelates, earls, and barons ; and that of 33rd Edward I., the king and all his council ; it is possible that a complete parliament was not at that time called, unless when a tax was to be imposed.

But the Statute of Carlisle (35th Edward I.) adopts another language ; it purports to be made by the king, earls, barons, and regni sui communitates, the commons or communities of his realm. This expression is the one afterwards most generally repeated. The word is sometimes *communes*, sometimes *communauté*, sometimes *toute la communauté* ; and by comparing together the Statutes 7th, 12th, and 14th Edward II., 1st, 2nd, 4th, 5th, 9th, 10th, and 25th Edward III., it is manifest, *first*, that there is no difference whatever in the thing signified by these two forms of speech, and, *secondly*, that both comprehended knights and burgesses. This last proposition is manifest from 9th Edward III., which mentions knights, citizens, and burgesses as “coming for the commonalty.”

The probability that these statutes so often omitted all mention of knights, citizens, and burgesses, because the matter related not to taxation, is greatly increased by the circumstance that we have the writs of summons to some of these parliaments, and the writs of expenses for their members ; from which it appears that the knights, citizens, and burgesses were summoned, and that many attended. It also appears that, as early as 3rd Edward I., customs were granted by “*tous les graunds del realme et par la priere des communes de marchands.*” In 11th Edward I., all persons are summoned who can bear arms and have twenty librates of land ; and also knights, citizens, and burgesses are summoned as to a Parliament. This was holden at Salop on account of the

expedition against Wales, and a subsidy of one-thirtieth was granted, as well as a force raised. In 18th Edward I., the writ is to summon two or three knights to represent the community, which, by the writ of next year, is shown to be for the county only; yet they are called the community of all England. Next year, however, a French invasion being apprehended, citizens and burgesses, as well as knights, are summoned, there being great occasion for supplies. In 24th Edward I. we have the actual return of citizens and burgesses; and in 35th Edward I., though the statute made at the parliament of Carlisle only mentions the commons of the realm, we find the writ of expenses for citizens and burgesses in the collection of records (1 Par. Writs, p. 192). The writ, 23rd Edward I., shows that community is a word of flexible import, for the knights are to represent the "community of the counties," the citizens and burgesses the "community of the towns." Likewise there is in 18th Edward I. a grant by the prelates and magnates for themselves and the community of the whole kingdom, of 40s. on each knight's fee to marry the king's daughter (the feudal law only allowing two marks), consequently this was a grant made without the consent of the citizens and burgesses. It appears, then, that at first these attended only to be taxed.

Thus there seems every reason to consider that from the year 1264, when Simon de Montford summoned them, the towns were regularly summoned as often as a parliament was held, but that they only attended when there was a question of taxing them, and that it was only towards the end of Edward I.'s reign that they attended as a regular and essential part of every parliament.

That the cause of the important change which admitted them was the rise of the towns in wealth during the preceding century, there can be no doubt; as little can it be denied that the summoning their representatives was designed to make them more easily taxed. A singular illustration of this is preserved in some of the old writs still extant, and which shows that other means were used than the assembling their representatives together. In the 10th Edward I. we find the king sending one John de Kirkeby round to all the cities and boroughs, and desiring each of them to give entire credit to whatever he shall state in the matter which he is directed to handle with them severally. What that matter is we are not left to conjecture; for another writ returns the king's

thanks for the subsidies which the towns promised him through John de Kirkeby.\* It may be further observed, that this mission of Kirkeby seems strongly to countenance the supposition that the plan of summoning the burghs, adopted by De Montford, had either fallen for some years into disuse, or was not resorted to on all occasions. When the grant of one-thirtieth was made for the Welsh war in 11th Edward I. by the parliament of Salop, the sums paid to Kirkeby were deducted (1 Parl. Writs, 10), so that it appears his mission so far failed as to make a parliament necessary.

That the plan recently introduced of allowing the freeholders to attend by deputy greatly facilitated this admission of the towns, is manifest. Possibly it suggested their admission. The crown could not require the attendance of so numerous a body; if it was regarded as a duty, they would have had an easy excuse for refusing; if it was regarded as a privilege, the crown could not be called upon to admit so inconvenient a concourse.

It has been suggested, and with great appearance of reason, that the towns first called to parliament were those within the royal demesne, and which were tenants *in capite* of the crown. When a charter of incorporation was granted by the king, the corporate body became tenant *in capite*, and owed such suit and service as was prescribed by the form of the gift. The inhabitants, the individual corporators, did not hold of the crown, but of the corporation, by a peculiar tenure called *burgage holding*. If they had been tenants *in capite* they would have been entitled to the privileges and subject to the duties of the lesser barons or freeholders, and consequently would at all times have been summoned with the county landowners; at first they would have been so called in person, and would have joined with them more recently in electing the knights of the shire.

We can have no doubt that the History of Representation in Scotland was similar to that which we have just been tracing. But one step of its progress is much better ascertained from having been later made—the representation of the counties; and in another particular there is a material difference in the history of the two parliaments; for the towns were represented, while the lesser barons, or freeholders, attended in person.

It is possible that as early as the end of the thirteenth century

\* Parl. Writs, i. 384, 387.

the towns sent delegates, or representatives, to parliament; for in 1294 we find Fordun mentions that John Baliol called together in a parliament "*majores tam cleri quam populi*." As, however, no mention is made of the barons, possibly the "*majores populi*"\* may mean the nobles. It is nevertheless to be remarked that in the treaty of marriage which this parliament made with France, the negotiation assumed to bind not only the prelates, earls, and barons, but also the towns (*communitates villarum regni*).† Edward I., too, summoned the states to meet at Perth, in 1305, and they gave full powers to ten persons, of whom two were barons, and two were to appear from the "*commune*," which most probably meant the boroughs; and this would show that they had been represented in the parliament which chose the delegates. But that Robert Bruce called the Burghs cannot be doubted, because we find in the parliament held 1326, there were assembled "*totus clerus, comites, barones, et universi nobiles, una cum populo*," which last expression occurring after "*universi nobiles*"‡ can only mean the burghs. The right of the burghs to attend all meetings of the estates was therefore clearly established, at least as late as the beginning of the fourteenth century.

Accordingly the laws of Robert I. purport to be made by the "prelates, freeholders, and haill community," which must mean the burgesses, because the freeholders had at that time no representatives (LL. of Robert I., Title, Chap. 34). In 1357, at the parliament held at Edinburgh on the king's liberation, the whole commons, as well as the prelates and nobles, are recited as composing it, and there are given the names of the thirty-seven burgesses who attended, choosing eleven of their number to represent them in the negotiation.§ Again, the statutes of Robert II., 1372, purport to be made by the consent of the prelates, earls, barons, and burgesses. The earliest laws, those of Malcolm II., who was king in 1004, purport to be made by the king and the barons. Those of William the Lion (1165) are stated to have been made by the king's consent, the prelates, barons, knights, and freeholders; those of Alexander II. (1214) by the king and nobility, and sometimes the judges are also mentioned. But till the reign of James I., and the year 1427, the lesser barons, as

\* *Scotichron.*, lib. xi. cap. xv.

† *Fordun*, lib. xiii. cap. xii.

‡ *Ib.*, lib. xi. cap. xvii.

§ *Eym. Fœd.*, vi. 40.

well as the greater, attended in person. In that year an act was made allowing them to absent themselves, provided they sent representatives (1427, c. 102). This condition they never fulfilled, but ceased to attend in person. Accordingly the parliament consisted of the prelates, greater barons, and burgesses, without any county members, until the year 1587, when James VI., having twenty years before made an ineffectual law, 1587, for the purpose of executing the statute of James I., made a more stringent one, which had the desired effect; and at the same time affixed a qualification of 40*s.* a-year of lands holden of the crown, and of residence within the county. Both of these circumstances were required to confer the elective franchise for choosing a commissioner or county member. The sum of 40*s.* amounts to 3*l.* of our money. Twenty years before an act with the same object had been passed, 1587, c. 33, but it affixed no qualification to the elective franchise, and imposed no fines.

The Scotch parliament, in some very material respects, differed from the English. The different estates always sat and voted together as one body. The business to be brought before it must first be assented to by a committee of the three estates, called *Lords of the Articles*, appointed till Charles I.'s time by the estates, but generally composed of the king's ministers. The king's assent to laws was not deemed essential to give them force. The parliament, or estates, used to make orders on the king himself; to direct the arming of troops and their levy; to appoint governors of garrisons; to make peace and war; to prorogue and assemble of itself. Nothing could be more complete than the misrule and the anarchy which grew out of these extensive powers; and the prerogative of the crown was reduced to a shadow, unless when it could raise a military force, or obtain the aid of one faction of the barons against another. The accession of James VI. to the throne of England produced the consequences of the imperfect federal union; but in no other instance was its operation ever so entirely beneficial to the less powerful nation; for if the prerogative of the crown was enlarged, and that of the parliament restricted, the country began for the first time to enjoy the blessings of a regular and tranquil government.

The History of the Irish Parliament is meagre and obscure. No statutes of it remain before the 3rd of Edward II.; but

many inquirers have considered it certain that as early as the reign of Henry II., when the country was first settled, or so far conquered as to be supposed settled, there was a council of the ruling class, the Irish within the pale, who were the portion of the people subdued by and immediately connected with the English. The Irish without the pale, living in a very rude state, and in continual hostility with the English, were treated by them in all respects as foreigners and as enemies. As the defence against them, and also the incursions made upon them, required constant precautions on the part of the English and their subjects within the pale, the holding of councils became in all probability a matter of necessary precaution. At first the leading men formed this council of the king's governor, deputy, or lieutenant. Afterwards the districts, or counties, into which the country was divided (only twelve as late as Henry VIII.'s time) sent representatives, as did the towns, which were thirty-four in number. A dispute appears to have existed between the English government and the Irish people as early as Edward III.'s reign, about the right of the latter to have their own parliament; for they then asserted it, and refused to send representatives to England. In the reign of Henry VII. an act was passed (called Poyning's law, from the name of the lord-lieutenant) requiring that the king's previous consent should be obtained, at the calling of each Irish parliament, to all the bills which should be propounded; and in Queen Mary's reign this restraint was extended by a prohibition to entertain any matter whatever during the course of the parliament, unless it had been approved by the English Privy Council. These laws, as is well known, were only finally repealed in 1782. But even during their existence, the power of taxing in all its branches was exercised by the Irish parliament exclusively; no English act was ever allowed to impose any new burthen upon the people.

It is a singular circumstance in the history of representation, that the country in which it was first known is not the one in which it has been carried to its greatest perfection. Our records do not enable us to trace the constitution of the English or Scottish parliaments so far back as we can follow the meeting of the French States-General. We have records of unquestionable authority as far back as the reign of Charlemagne, which show how his courts, councils, *malla*, or *placita* were composed. All



those who held under the crown were to come twice a year, in summer and autumn;\* and an old author, contemporary with that prince, speaks of “*Cætera multitudo*” and “*Cæteri inferiores personæ*.”† But early in the ninth century we find proof of the presence of persons who, though not elected as representatives, were yet chosen by the people to fill the places which gave them admission to the Estates. A writ exists of the year 819‡ requiring each count to bring with him twelve echevins, scabini, or rachimburghers, if there were so many in his domains, and if not, to fill up the number of twelve by the better kind of people (*de melioribus hominibus ejusdem comitatûs*). Now, although this left the choice of the substitutes to the counts, the echevins were all elected by the people. For we have also an ordinance of 829, the Capitulary of Worms, which, from the purport of it, is plainly declaratory, or made to confirm the existing laws; and it requires the *missi* to remove all bad echevins (*malos scabinos*), and replace them with good ones, chosen “*totius populi consensû*.”§ There is also in the Alemannic law a prohibition to hear any causes, unless with the assistance of an assessor chosen by the people. It is plain, therefore, that so early as the beginning of the ninth century there was a popular infusion occasionally in the king’s mallow, or council.

But the French states at no time attained the regularity of the English Parliament, as we have seen in a former part of this work (Part I. Chaps. XI., XII., XIII.), and there never was anything resembling the representation of counties, the barons always attending in person, and never in any instance choosing representatives. Nor does such a representation appear at any time to have been known either in Germany or in Spain, or in any other country than Great Britain and Ireland, and perhaps the Gothic kingdoms of Scandinavia, where the peasants sent deputies (Part I. Chaps. XIX., XX.).

In tracing the origin of Representation we have unavoidably gone at length into that branch of the subject which is most interesting to the people of this country, and have been led to examine

\* Ut ad mallow venire nemo tardet, primum circa æstatem, secundum circa autumnum (Capit. A.D. 769, cap. 12, ap. Baluz. i. 192).

† Hincmar, de Ord. Pol., c. 35.

‡ Capit. ii., cap. ii., ap. Baluz., i. 605.

§ Capit. 829; Cap., cap. ii.; apud Baluz., i. 665, 1216. The same law is often re-enacted in the Capitularies.

the most important part of the early history of the English and Scottish Constitutions. There was no other way of avoiding endless repetition when we come to treat of the British form of government than by thus anticipating a portion of that important subject.

The questions upon which it has been necessary to touch have given rise to sharp controversies ; the natural zeal of the antiquary having often been exacerbated by the additional vehemence of the political partisan. Among the combatants on either side, the two principal champions of opposite doctrines respecting the earlier or later completion of our Parliamentary system are Mr. Petyt and Dr. Brady, the former having published his "Rights of the Commons Asserted" in 1680, and the latter his answer to it in 1683. There have been many other combatants in this warfare, of more or less name. But in treating the whole subject I have consulted only the true and safe sources of information,—the statutes themselves and the Parliamentary writs, both as published by the Record Commissioners ; the early Scotch statutes, unfortunately not yet given by the Commissioners ; and the Capitularies of the French monarchs.

## CHAPTER VIII.

## QUALITIES OF REPRESENTATION.

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Evils of Federal Union—Advantages and Disadvantages of Small States—Feebleness of Federal Government ; limits to its extent—Representative Government free from such evils—Benefit of intrusting power to small numbers—Of the People being able to meet in small bodies—Prudent measures and orderly deliberation—Increased responsibility of Rulers—Selection of Deputies—People confined to acts of which they are capable—Corruption of ruling class lessened—Diligent performance of duty—Greater Security to Liberty—Longer preservation of Popular Power—Country admitted to Government—Towns prevented from domineering over it—Real power of the People increased—Illustrations from French Republic and English Commonwealth—Rousseau's error.

THE great change in political affairs which we have been tracing to its origin could not be introduced without effecting a most important alteration in the whole structure of government, and enabling men to frame societies both upon a very different scale and upon very different foundations from those of the Commonwealths in ancient times. We are now to consider in detail what those alterations are which this invention of modern times has effected in public polity ; and we shall best perform that task by examining the qualities and the tendencies of the Representative principle.

1. The first and most striking property of the Representative principle is that it enables a free or popular government to be established in an extensive and populous country. This we have already illustrated, by referring to the state of the ancient commonwealths, and the imperfect devices which became necessary for the purpose of enlarging the limits of the state without giving up Republican Government. Beside the other defects of the Federal Union, its manifest tendency to create mutual estrangement, and even hostility, between different parts of the same nation is an insuperable objection to it. Small communities are exceedingly apt to conceive against their neighbours feelings of

rivalry, jealousy, and mistrust; each individual bearing so considerable a proportion to the whole society that the worst personal prejudices and passions are nourished, and, the most ignorant and violent of the people being the most numerous, the tone of the whole takes the turn which these bad passions tend to give it. If any illustration of this truth were wanted, we have only to remind the reader of what we found in the history of the Italian republics (Part II. Chaps. XIX. to XXVII.). The government always is influenced by such feelings, most of all in a democracy, but in a great degree also in an aristocracy, and even in a petty principality. For the rulers themselves in such a narrow community partake of the general sentiment, even if the public opinion should not sway them. Whoever would see further proofs of this position may be referred to the Ancient Commonwealths of Greece. As a Florentine hated a Siennese worse than a German or a Spaniard, or even an infidel in modern times, so of old did an Athenian hate a Spartan or a Theban worse than a Persian. Now the Federal Union, by keeping up a line of separation among its members, gives the freest scope to these pernicious prejudices, feelings which it is the highest duty of all governments to eradicate, because they lead directly to confusion and war.

It may further be doubted if the existence of a small community is of itself desirable for the improvement of society. Undoubtedly great public spirit may be expected to prevail in such a nation, and the feelings of patriotism to be excited, or rather to be habitual with the people, each individual of whom feels his own weight and importance instead of being merged and lost in the countless multitude of a larger state. But this advantage is more than counterbalanced by the attendant evils of petty, contracted ideas, which such a narrow community engenders, and especially by the restlessness which arises among all the people, when each takes as much interest in the state's concerns as if they were his own. There is thus produced both an over zeal, a turbulent demeanour, a fierce and grasping disposition, hardly consistent with the peace of the community; and also a proportionate inattention to men's private affairs inconsistent with the dictates of prudence, as well as a disregard of the domestic ties, equally inconsistent with amiable character and with the charities of private life.

It would further appear that limits may be much more easily

set to the bounds within which a Federal Union can be established, than to those within which a representative system may conveniently exist. For the central government in a Federacy is of necessity feeble. It is more like a congress of ambassadors from many nations than the council of one nation. Each person is only animated with zeal for his own state, while none feel for the general welfare. But a representative government may extend over the largest dominions, and they who compose it may exercise an authority at once vigorous and considerate, thinking for the advantage of each portion of the community, as well as consulting for the welfare of the whole.

2. But it would be a great mistake to suppose that the only benefit of the representative principle is that one which strikes us first, the enabling a popular government to extend over a large territory. It is not even the greatest of the advantages derived from the principle. The next benefit which we are to consider is more important: it is the prevention of mob government by the substitution of a small body of men to whose hands the whole power of the people is confided. This at once puts an end to the tumultuous meetings, and to the rash proceedings of large popular assemblies. Mere clamour can no longer carry the day, and riot is banished from the public assembly. The bare diminishing of the numbers composing such assemblies would produce this effect. If, instead of 5000 or 6000, only 200 or 300 were to meet, although they were chosen, and chosen indiscriminately from the same body, so that the two meetings must be composed of the very same materials, yet the proceedings of the lesser number would be much more orderly, and their resolutions much less the result of sudden impulse, and the dictate of momentary clamour or enthusiasm.

3. The representative system is of exceedingly great benefit to good government, as well as to public tranquillity, by enabling the people to meet and transact business in smaller bodies than must assemble if they acted for themselves. The reduction of the numbers assuredly would of itself be a material advantage, even if the same matters were discussed before such a meeting, and the same powers were exercised by its members as when the whole body unrepresented and undivided carried on the government. A small number of persons are always more orderly in their proceedings, and less under the influence of clamour and of

sudden impulse than a great number even of the same persons ; and they, who in a private interview will listen to reason and decide rationally, will under the contagious excitement of a multitude shut their ears to all common sense, and resolve on the most absurd things. Therefore, if the supreme power could be subdivided, so as to let one small meeting dispose of one matter and another of another, or if, by a kind of federal plan, every matter should be discussed and determined by the whole community meeting in small bodies and communicating the results of their several deliberations to a central council or executive magistrate, a far more rational course would be taken than if the same individuals were congregated in one large body and decided in its assemblies. So if on each material question the different constituent bodies in any state having a representative government were to instruct their deputies, and those deputies were strictly to follow their directions as ambassadors rather than representatives, a very great improvement would be made upon the ancient constitution of popular government. As a representative system it would sin against all the fundamental rules ; but compared with the old system it would be a substantial improvement.

4. This, however, is not all : the lesser body of representatives so chosen are more responsible than the greater body who chose them. They act more under the influence of being personally answerable for what is done. Each person in a small body feels that he is looked to by his fellow-citizens as the author of the measures adopted. In a large meeting the divided responsibility leaves each individual almost free.

5. But the smaller body is not composed of the same materials as the larger, and now we come to the greatest quality of representation. The multitude of ignorant and foolish persons greatly overpowers the small number of well-informed and reflecting and wise persons in every community. The whole citizens meeting to discuss measures, decide according to the sense, or rather the folly, the lights, or rather the ignorance of the multitude, which forms necessarily the great majority of the assembled people. But the representatives are chosen ; they are selected ; they are set apart from the mass, because of some qualities that distinguish them from that mass ; these qualities are such as give a pledge of their greater fitness for the functions of government. In one man it is greater wisdom ; in another more ample wealth ; in a

third higher birth ; in a fourth greater information. In almost every one integrity or respectable character is a ground of choice, and prudence or discretion, itself a virtue, the parent of some and the guardian of all the virtues, is hardly ever left out of the account in determining the choice of those persons who are to act for the community in the conduct of their most important affairs. Hence the influence of the ignorant, the heedless, the stupid, the profligate, is reduced to a small amount in the conduct of the government, for, generally speaking, the same persons who being unfit to be themselves trusted with power would ill use it, are very capable of making a good choice enough of a representative. The temptations to act recklessly or corruptly are much less powerful in the election of a representative than in the government of the state.

6. This leads to another and almost an equal advantage of the representative principle. The one matter brought before an elective body, a body whose functions are confined to the choice of representatives, is very much more simple and easy than the various matters which are brought before the rulers of a country. Those men who would be wholly unfit to be trusted with the decision of a question touching foreign policy, or jurisprudence, or domestic economy, may be tolerably well able to select a person as their representative. It requires no great degree of information, and no profound acquaintance even with man's character, to tell which of several candidates is the abler, the more discreet, or the more respectable person.

7. The persons thus chosen are on that account, on account of the qualities which recommend them to the electors, less likely to be corrupt, to rule for sordid interests and act from profligate views. But their small number, their individual responsibility render them much more likely to be afraid of acting corruptly, how little soever they may value virtuous conduct or unsullied reputation for its own sake. The same persons, who among a vast multitude might take a bribe, would feel afraid of being bought were they members of a small body. Thus, the electors may be bribed ; and yet the men returned by such foul means, nay, the very men who obtained their election by bribery, may be very far from venturing to act corruptly in administering the trust thus bestowed. Very little reliance could be placed on the purity of a multitude in deciding upon questions, the determina-

tion of which certain possessors of large wealth had an interest in affecting by corrupt means ; yet the same wealthy persons would find it a very difficult matter to tamper with the representatives of that corrupt body. If any one doubts this, let him only consider how often the charge of bribery is preferred against constituent bodies, and generally with the absolute conviction of the imputation being true, however rare the cases may be in which its truth can be proved ; how extremely rare it is to see any charge, even to hear any suspicion flung out against any member of the representative body. I have sat in Parliament for three and thirty years, and I never even have heard a surmise against the purity of the members, except in some few cases of private Bills promoted by Joint Stock Companies. I had been considerably upwards of a quarter of a century in Parliament before I ever heard such a thing even whispered, and I am as certain as I am of my own existence, that during the whole of that period not one act of a corrupt nature had ever been done by any one member of either house. I question if any one election had ever taken place during the same time, in which many electors had not been influenced by some corrupt motive or another in the exercise of this sacred trust.

8. It is one of the most important benefits of representation that it secures the faithful and regular discharge of the political functions. Wherever the people at large are to rule, they have no chance of constantly applying to the discharge of their public duties : the detail of administration cannot interest them : it demands too much time and patience to master ; and their ordinary business, the daily labour to gain their daily bread, renders constant attendance at public meetings impossible. We may remember the difficulty of obtaining the attendance at Athens which the law required ; even among that nation of politicians it was necessary to bribe the citizens with pay, and sometimes to compel them by force (Part II. Chap. xvi.). The division of labour never was more happily applied than by the representative principle, which, leaving to the people the office they are fit for, gives to the deputy the work he can best do ; and thus secures it being both done and well done.

9. It must also be borne in mind that the most effectual security for the people's rights and liberties is not their exercising the whole power directly, but their having a select body of able



watchmen to guard those invaluable possessions. A control over their watchmen, the power of naming them, the power of removing them, is all that the safety of their freedom requires them to possess. Any power beyond this, even if they were qualified to exercise it well, would be wholly useless for the purpose. The deputies can just as effectually protect them. But in fact the deputies can more effectually protect the liberties of their constituents than those constituents can themselves. A very large body of men are much less likely to be always on their guard against encroachments. They soon prove weary of watching, and begin to slumber. They are easily split into parties by intrigue; and they are far from being proof against corruption. Their measures to resist a common enemy, foreign or domestic, are never framed with such wisdom or executed with such vigour as a small body of able and experienced men can bring to the performance of this task. Those men are ever on the watch; they have no other duties to discharge, no other business to follow. Thus the liberties of the people are more secure in their hands; and the power of the people, the only power they can safely exercise, that of election, is more likely to be preserved, than if the whole government were in their own hands.

10. It is not an unimportant circumstance in the consideration of this subject, that the representative system enables the scattered inhabitants of the country to bear their part in the administration of public affairs, whereas the congregated masses of the people in towns could alone partake of the government, were each man to appear on all occasions in his own person. Unless upon rare emergencies the country people cannot be brought together. The townsfolk are always easily convened. You may assemble the countryfolk once in a year, or once in three years, to choose delegates; oftener they never can be convened. The townspeople are always ready to attend any meeting. Giving all, both town and countrymen, an equal right to attend, nay, summoning all to attend alike, has no kind of effect. To the townspeople, who live within a few paces of the place where the meeting is held, attendance costs nothing; to the peasant, who has to give up a day or two of his work, the attendance becomes impossible: he will come now and then to choose a delegate, but never on ordinary occasions. Hence in all republics, before the representative principle was known, the whole government of each state was

necessarily in the hands of the towns. That principle has enabled the other half or more of the people to take their equal share in the administration of the common interests of the whole state.

11. Finally, it is the great, the inestimable advantage which this principle secures, that it gives the people their share in the government, without the inconveniences and mischiefs which we have seen that it avoids. The direct exercise of the supreme power by the whole people is indeed a scheme of polity which may at first sight appear to give them more sway in the administration of their concerns, than the scheme which for a certain time transfers the supreme power to their representatives. But when duly considered it should seem that this is really not the case. In the *first* place it is an abuse of words to call that an exercise of power by any person which is only the appointing him to a function for which he is utterly unfit. Who would deem it any power conferred upon him to be allowed the privilege of cutting off a sick man's limb, or trepanning one who had his skull fractured? But, *secondly*, if the mischiefs of the ignorant and unskilful performance of these functions all fall upon the party himself, the abuse of terms is much more glaring. Who would call it a restraint upon his liberty to be precluded from mangling his own limb, or driving the saw of the trepan into his own brain? The good of the whole is the end of all government; any power inconsistent with that is bad for the whole body of the state. But independently of such views, which belong to another consideration of the subject, when we speak of power being vested in certain hands, we always mean a rational investment, an investment in hands capable of exercising the power bestowed. Lastly, it is much more safe and beneficial for the people themselves, and more beneficial with a view to their power itself, the only point now under consideration, that they should not govern directly and in the mass. If trusted with the whole direct power, or indeed with any portion of the government directly, we may be assured that they never can long retain it. The certainty of its abuse, and the inevitable mischiefs which its unskilful exercise must entail upon the state, will, after a short time, assuredly occasion a revulsion, and the direct power will be transferred to other branches of the community, or to an oligarchy at home, or to a sovereign at home, or to a foreign state; and it will be transferred entirely, without any control being left in the people's hands, even that control

which they are well capable of exercising. The memory of the mischiefs which their incapacity or corruption occasioned will be the security of whatever tyranny is founded upon the ruins of the democracy. Even when the body of the people did not formally exercise the functions of government, yet possessed too constant a control over their rulers, so that the salutary operation of the representative principle was impeded, and the popular voice ruled too directly, we have seen the fatal effects of their misgovernment in propping up the most rigorous tyranny, and stripping the people of all control, all voice in the management of their concerns. The mob influence, which was the mainspring of the Reign of Terror in France, enabled Napoleon to usurp the government, and make it absolute, exhaust the country by his conscription, and lay it at the feet of foreign nations by his wars. The cruel executions which the people called for in England, and the influence of their fanaticism over the Long Parliament, prepared the way first for the military despotism of Cromwell, and then for the restored tyranny of the Stuarts. The French people would have been more powerful in the just sense of the word, and would have retained their sway longer, had they been content to wield only the power which they were fit to exercise; and the English would neither have required a restoration in 1660, nor a second revolution in 1688, had they been satisfied with electing representatives, and abstained from interfering with the exercise of the trust which they had bestowed.

It thus plainly appears that nothing can be more senseless than the opinions of those who have regarded the only liberty enjoyed by a people living under a representative government as that which they have during the election of their delegates. Rousseau, with his accustomed shallow dogmatism, says, that the English are free then only, at all other times "they are slaves"—"they are nothing." \* This is not even true of the people's power, as we have seen; but Rousseau confounds liberty with power. The loss of all direct power, if it were ever so complete, would not necessarily work a loss of all liberty. The rights and the freedom of the people would be protected by their deputies, and all encroachments of arbitrary power would be effectually prevented. The only risk would be those deputies forgetting their duty, abusing their office, and joining with the usurpers, oligarchical or

\* *Con. Social*, liv. iii. ch. xv.

monarchical. But this is prevented by the limited character of the trust, and the people retaining the power of dismissing the representatives who have betrayed them. This is all the power which it can ever be necessary to leave in the people's hands in order to protect their liberties ; and we have shown how much more effectually this protection is afforded by the representative than by the direct exercise of their authority.

Such are the great and manifest advantages conferred by the Representative principle, such the evils of obstructing its full and entire operation ; and on these accounts it is that we justly and confidently consider it as the greatest of all the improvements which have ever been made in the science of government and legislation.

## CHAPTER IX.

MODIFICATIONS OF THE REPRESENTATIVE PRINCIPLE—THOSE  
ONLY AFFECTING THE MODE OF ELECTION.

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Two kinds of modification ; one regarding the manner of voting, the other limiting its extent—Double election—Its nature in France—Its evils—Inconsistent with the Representative Principle ; duty of electors ill performed ; corruption facilitated ; minority made powerful—Does not lessen the Popular Power—Combined choice—Manner of Voting—Distribution of Representation—Proportion to population—Errors in English System—Voting by Ballot—Contrary to principle—Ineffectual—Encourages Falsehood—Protects Tradesmen—Useless to Tenants—Means of Preventing Corruption and Expense—Efficacy of Registration—Inefficacy of Ballot—Disfranchisement—Extension of Franchise—Of Electoral Districts.

HITHERTO we have only considered the Representative principle generally, and examined those qualities which belong to it in whatever manner it is applied. But there are various modes of this application, and it is of great importance to explain these. Some of them, though productive of important effects, and tending to modify by extension or restriction the principle itself indirectly, yet do not directly extend or impair it. Others have a direct influence in impairing it, and rendering it less beneficial and less severe.

I. To the former class belong the principle of double elections, the method of combined choice, and the manner of giving the vote.

i. The principle of double election appears to have been borrowed from the complicated voting of the Venetian and other Italian governments. Possibly it might have been suggested by the ancient Federal system, in which the people chose magistrates, and those magistrates appointed deputies, who voted in the congress. It is, indeed, not impossible that the mere exercise of the Representative power itself may have suggested this refinement ; because the deputies elected by the votes of the people, too numerous to vote upon measures themselves, vote on these measures, and so it may have occurred that the people were too numerous to vote in the election of deputies, and that therefore

they could delegate to a smaller body the choice of those deputies. But be its origin what it may, the plan consists in the whole body of electors choosing a smaller number to exercise for them the power of choosing Representatives. This principle was adopted in France under the two Republican Constitutions which were established in 1791 and 1795.\* It was continued under the Consulship and the Empire ; it was retained after the restoration, 1814 and 1815, in the constitution under the charter ; and it was only abandoned in 1830 upon the change which then took place. The assemblies which chose the electors were called the "Primary Assemblies." Those which chose the deputies were called "Electoral Assemblies or Colleges." The Directorial Constitution of 1795 gave one elector for every two hundred of the Primary Assembly. The constitution of 1799 and 1804 had a much more complicated principle. The commune (or parish) chose a tenth of their number which was the Communal list ; these chose a tenth of their number to form the Departmental list ; and these again a tenth to form the National list ; so that the number of the primary electors was reduced to one in a thousand ; and this thousandth were only eligible to the senate, tribunate, and legislative body by the choice of the public functionaries and senators together.

All such double, or more than double, elections are fundamentally bad, and proceed upon a principle radically vicious.

1. They are wholly inconsistent with the representative principle. If a person is fit to choose an elector, he is fit to choose a representative. He may, as we have seen, be wholly unfit to decide upon a law or a measure of policy, and yet be fit to select some one to act for him in discussing and determining those important matters. But if he is only supposed fit to choose the elector, how is the line of his qualifications to be drawn ? It is much easier to determine whether or not any given person is fit for the functions of a representative, than to determine his fitness for an elector ; because it is difficult to decide what qualities are especially required for making a man a good elector. This whole process assumes that a person may be fit for being an elector who is not fit for being elected ; but it fails to show how that line is to be drawn.

2. The chances of bribery are much more numerous where the

\* It was not part of the Constitution of 1793.

electoral body is small, than where it is numerous. The whole people select a few, and these few having no function whatever to perform except choosing others, they are set up as a kind of mark at which all the missiles of corruption may be launched. They are sure to be persons of less respectability than would be chosen as representatives, because the trust reposed in them is incomparably less important and requires less capacity to execute it. Besides, their office is only occasional and temporary; they feel in proportion to its less duration less responsibility. Therefore they are in every way more exposed to temptation and less likely to resist it.

3. But a most serious evil of the double election is its tendency to place the power in the hands of a minority of the community. If all the electors of a district choose the deputy there is a possibility, but not a great likelihood, of the minority of those representatives being persons returned by great majorities of the voters, and the narrow majority being returned by small majorities. But this becomes much more probable if, instead of choosing the deputy directly, there is an intermediate election. Suppose a county or department having two thousand votes to be divided into twenty districts, each of which by a Primary Assembly chooses one to the electoral College. If the twenty electors are divided in the proportion of eleven to nine, as to the candidate for the representation, and all the eleven are chosen by fifty-one to forty-nine in these primary assemblies, and the nine are chosen unanimously in theirs, then the candidate who has only five hundred and thirty-nine votes, is elected to represent the whole two thousand voters, and the other is rejected who has one thousand four hundred and thirty-nine. This, of course, being an extreme case, is not likely to occur; but in various degrees it is very possible, and the double election gives every facility to intrigue, corruption, and stratagem on the part of the minority. All the districts in which the people are nearly unanimous will be neglected, left unassailed as hopeless; and the effort will be made to bring over or intimidate enough to constitute a majority in those districts where the numbers are more nearly balanced. In each of these the purchase of a few votes will secure the return of an elector, and also the return of such a representative as the great majority of the people would reject. This risk, too, is wholly independent of the other risk arising from corrupting the electors.

We are now supposing the electors to be perfectly incorruptible, and that the effort is made in the primary assemblies alone.

But although these are the serious objections to Double Election, yet it has no direct operation in diminishing the power of the people, or vesting in an oligarchy their influence over public affairs and the course of the government. The government is still popular in every sense of the word, and the people are still secured in the possession of their rights, because they have the power in their own hands of choosing persons who will elect men deserving their confidence, and men removable by the next choice of electors in case they betray their trust. To instruct deputies on all points of their conduct is impossible, because it is impossible to foresee all the events that may occur after an election and before the several measures come under the consideration of the representatives. But to instruct an elector is perfectly easy, because the only point is the simple one of who shall be sent to represent the district, and that choice is to be made immediately and before any change of circumstances can have taken place. Hence the power of the people and their control over the representatives cannot be said to be materially diminished by the double election, nor the responsibility of the representatives be much lessened. Certainly whatever difference is made in both must be unfavourable. The power of the people will be a very little diminished, and the responsibility of the representative a very little lessened.

ii.—There is another way in which the elective process may be modified ; there may be a Combined Choice. One body only of the people may be allowed to name a certain number of candidates, and out of these another class may select the representative. Thus all persons whatever may choose ten candidates, and all persons of a certain income may out of these select the representative. There are not such serious objections to this as to the former modification ; but it is exposed to another which does not necessarily arise against the former ; the choice of so many as ten or more candidates (and they must be numerous to give the selecting class any real power of choice) gives rise to much confusion, and to the great risk of votes being thrown away, and of a minority combining to choose their candidate, while the majority are voting without concert. But the main objection is this, and it is insurmountable. The class which chooses the candidates, or eligible



persons, may usurp the whole election, and exclude the other class altogether. They have only to choose a single candidate who is at all fit for the place of representative, and all the rest plainly and certainly unfit, and the power of selection among the names on the list becomes a mere nullity.

iii.—The manner of taking the vote is the only other modification that requires examination of the class of contrivances now under consideration ; and this becomes very important with a view both to the right exercise of the elective power, and the preservation of the peace and the morals of the community.

Three points under this head require our attention—the distribution of the representation, the protection of the voter, the prevention of error, corruption, and expense.

1. The principle which ought to govern the distribution of the representation is as nearly as possible to apportion the same number of representatives to the same number of inhabitants in any district. I say as nearly as possible ; for it does not seem an essential requisite to fair representation that it should be rigorously proportioned to the numbers of the people. On the contrary, there are manifest objections to this equal distribution in a country of which the population is very unequally dispersed, and which has towns of great magnitude as well as extensive districts thinly peopled. Suppose the rule of equal distribution were applied to England, its five hundred representatives would be so divided that the metropolis would return fifty-five. So large a body always on the spot, and representing constituencies so numerous also in the immediate neighbourhood of the parliament and the government, would have an influence exceedingly dangerous to the balance of the constitution and the independence of the legislature. The case of Paris is still stronger ; for though its inhabitants are much less numerous in proportion, the excessive power and influence of the capital in France is one of the great practical evils of that country. In either case the formation of a party, and the acting in concert, is far easier when so many members come from the same place ; and to this must be added a consideration common to both countries, but of especial weight in France, that the natural influence of dense masses of people, independent of their weight in the representation, seems to warrant rather giving them a smaller proportion of members than is answerable to their numbers. But it cannot be doubted, on the

other hand, that the giving to a comparatively insignificant town like Kendal or Harwich, of ten or eleven thousand inhabitants, as many representatives as to the West Riding of Yorkshire, with its million of people, is a gross absurdity, and contrary to the very first principles of the representative system. The electoral system in France is free from all possibility of this evil ; for the deputies are chosen by districts, without any regard to towns.

Another principle ought to govern this distribution ; each class and interest in the community should be represented. Suppose there were one important branch of trade confined to a single district, and the number of inhabitants in that district did not warrant its returning a deputy with a view to population ; still it should be represented with a view to the trade driven by it. So, important professions should be represented ; and important classes of properties. Our English system sins against all these canons, and sins grievously. It allows but one test, the ancient distribution of men into towns. Harwich and Kendal are represented—the former by two members, the latter by only one—because these are towns ; while districts of the country containing ten times as many inhabitants are allowed about the fifth part of a member each. Again, property is the qualification of a voter, and yet only one kind of property is regarded ; so that the greatest mass of the property next to the land, the eight hundred millions belonging to the public creditor, are wholly unrepresented.

2. The protection of the voter's independence in his exercise of the franchise is an object of primary importance. As workmen and labourers are under the influence of their employers, tenants of their landlords, and shopkeepers of their customers, it has been thought by many reasoners necessary that we should enable these dependent classes to give their votes without any control ; and the obvious method of doing this is said to be the power of secret voting, or the ballot.

The advantages of this mode of proceeding are obvious ; and they are exactly applicable to the case : the remedy is a specific ; it is directly calculated to arrest the evil. But there are considerations of importance which have not always been sufficiently considered by the advocates of the plan. Of these one of the most important is this : that the elective franchise is in the nature of a public trust or duty, and ought, therefore, to be executed under the responsibility of the functionary, the elector's conduct

being known. It is certain that a much more important vote than the elector's is the representative's; and it is as certain that the representative is exposed to equal disturbing influences in the discharge of his duty. How many men dread the frown of the court! How many professional men are exposed to serious injury from the possessors of power! How many naval and military men are dependent upon the favour of the government, and liable to be all but ruined by its hostility! Yet no one can seriously contend that votes in Parliament should be given secretly; because the constituent has a right to know how his representative votes. It must be admitted that the reason for publicity in the elector's case is not so strong; yet is there a reason, and of nearly the same kind. For all the community are interested in the honest and enlightened exercise of the right by each voter; not to mention that where there are any classes excluded from voting, they are represented by the classes which possess the franchise, and have a right to know how it is used.

But it is another argument against the ballot, that men can never be prevented from trying to influence those under their control; and that, do what you will to prevent it, they will always seek to discover how their workmen, tenants, and tradesmen have voted. Indeed the whole argument for the ballot assumes that they will do so; it proceeds upon the assumption that one class has power over the other, and is resolved by all possible means to exert this power. Then how can the unfortunate voter, who has secretly given his support to the adversary of his patron, conceal his act, except by a course of falsehood—a course maintained from one election to another? Cicero's description affords but a slender recommendation. "The ballot," says he, "is a favourite with the people, because it gives men an open countenance, while it conceals their thoughts, and lends them a licence to do whatever they please."\* Surely these are very powerful reasons for disliking such a plan; unless there be a certainty, not only that the evil of compulsion is generally prevalent, but also that the remedy will prove quite effectual.

Both of these positions, however, appear to be more than doubtful. It is certain that the advocates of the ballot have both

\* *Grata populo est Tabella, quæ frontes aperit hominum, mentes tegit, datque eam libertatem ut quid volunt faciant.*

exaggerated the malady and over-praised the cure. It is, perhaps, nearly as certain that the adversaries of the ballot have considerably exaggerated the evil consequences of it; but chiefly because, like its advocates, they have overrated the effects it is likely to produce. The truth really is, that very many of the voters, even in the classes for whose protection the ballot is proposed, would vote exactly in the same way were their vote given ever so secretly. The circumstances which create the influence so much dreaded have a most direct and universal operation in producing a disposition of the inferior to follow the course of the superior party. Almost all tenants take an interest in favour of their landlord, and have a pleasure and a pride in supporting the candidate of his choice. The majority of workmen always feel disposed to support the party of a kind and considerate employer; farm labourers, without any exception, do so; and the greater part of manufacturers or artisans would follow the same course; though certainly these last are not so much under the employer's influence. Shopkeepers are the class to whom the secrecy would give the greatest protection, and in their case the ballot would have most effect. As for tenants, even the few who would go against the landlord could not be effectually protected; because whatever tenant was suspected would either be required to pair off with an adverse voter, or to abstain from voting altogether; and thus the whole protection of the ballot would be defeated.—Some other supposed advantages of the ballot we shall have occasion to consider under the next head.

3. The means of preventing expense, corruption, and error, are next to be examined.—A well-devised system of registration seems one of the most effectual. If care is taken to scrutinize each claim at the time when there is no contest to excite the passions and prevent just decisions, the process of voting will be very short and very simple. But all this difficulty, and the necessity for a register, assumes that the franchise is confined to particular classes, of which we are hereafter to discourse. Appointing a variety of polling-places, and having all the elections over in one day, is a most wholesome expedient for preventing expense and checking intrigue. Excluding all but residents from a vote is another device most useful for attaining the same end, and there can no reason whatever be given for allowing any person to vote

in more than one place. The attaching a vote to all property of one kind, as our law does, and to property of another description only giving the right when combined with residence, is contrary to every principle.

The prevalence of bribery is the most difficult subject with which we have to deal in considering the defects of the representative principle; and the ballot has been proposed with much confidence by sanguine men as the best means of attaining this most desirable object. I own that I cannot at all adopt this opinion. Suppose the wish for a seat to remain unabated—the means of corruption to continue unimpaired—the disposition to bribe and the readiness to be bribed being the same, I conceive that the secret voting would only give rise to an arrangement much more likely to extend corruption than to restrain it. A class of *vote-contractors* would be formed, who would bargain with the candidates, or with their agents, or with their friends, to receive so much in the event of the election being won, and nothing in the event of it being lost. Suppose such an agent bargaining to receive 1000*l.* on these terms, he immediately sets about agreeing with three or four sub-contractors, each of whom is to have 100*l.* or 150*l.*, if the election is won, and not otherwise. These sub-contractors have an interest in bringing as many votes as they can buy for five-sixths of the sums agreed upon, taking to themselves the remaining sixth; and each voter whom they bribe is to be only paid in the event of success. Thus every contractor, sub-contractor, and voter is interested directly in the success of the candidate; and a set of agents is created such as no election on the old plan can ever call into existence. Who can for a moment doubt that this system of corruption must prove more active and more universal than any that now exists?

A plan has sometimes been adopted of disfranchising places against which general corruption has been clearly proved. This seems a very rude and clumsy remedy; and it is objectionable further on the ground that the innocent are punished, both now and hereafter, with the guilty; and above all, that it is a remedy which never can be applied to the corruption exercised in large places. There were above two thousand persons proved to have been bribed in one Liverpool election. Did any one ever dream of disfranchising that large town? And yet no such extensive

bribery was ever shown to have been carried on in any other place. It must always be borne in mind that the franchise is bestowed on a place, not as a favour or as a privilege to its inhabitants, but in order to obtain from it the contribution which is due towards the formation of a legislature for the whole country.

A very large extension of the franchise appears to promise the most effectual and the safest remedy. If there were no small places entitled to return members—if no place or district under five thousand voters were allowed representatives—there would be no such thing as bribery known, and one of the greatest mischiefs of popular government would be wholly and for ever removed.

## CHAPTER X.

MODIFICATION OF THE REPRESENTATIVE PRINCIPLE—RESTRAINTS  
UPON THE RIGHT OF VOTING.

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Modifications limiting the Right of Voting—Combined Choice—Representative Qualification—England; Scotland—Inconsistency of English System—Error of extreme Reformers—Elective Qualification—Pretended grounds of this—Real grounds—French and English Qualification—English Criterion of Respectability the worst—Rule “Once a voter always a voter”—Exclusion of the best persons—Objection to Property Qualification—Immorality encouraged—Qualification a recent Invention—History of Representation in this respect—Form of Government not affected by Qualification—Supposed advantages of Qualification—Good Representatives—Education Qualification—Check to Corruption—Extension of Suffrage and of Electoral Districts.

NONE of the expedients which we have been describing for modifying the principle of representation has any tendency to render that principle more impure, to impair its force, or to interfere with its use in supporting popular government. On the contrary, all but the Double Election tend to preserve, and purify, and improve it.

II. We are now to consider modifications of a very different nature, the object of which is to impair and, as it were, to adulterate the representative principle, rendering the political system less popular in which they are introduced.

1. We have examined the modification which consists in giving to the greater portion of the people the power of selecting candidates. This modification belonged to the first class; but it would have belonged to the second class, if the choice of candidates had belonged to a select class of the community, or persons of a certain income, and the people at large could only choose out of the number so selected. In like manner, if the people by direct or by double election choose the eligible persons, and the executive government select from them, the modification belongs to the class which we are now considering, unless the people are enabled to choose absolutely the candidates, and can protect

themselves by choosing only a single really eligible person for each vacancy.

2. Another modification by which the right is restricted is the requiring certain qualities to be possessed by the persons chosen as representatives. Sometimes a greater age has been required than that at which the law allows persons to manage their own affairs. In France, after the Restoration, no one could be returned to the Chamber of Deputies who was not forty years old. Sometimes the person elected was required to be of the class of electors. This was the law in Scotland before the year 1832. A property test or qualification, however, is the most common. In England, all but members for the universities and peers' eldest sons must have 600*l.* a-year clear in landed property to sit for counties, and 300*l.* to sit for boroughs; the eldest sons of persons qualified for county members being presumed to be themselves qualified. It must be obvious that nothing can be more absurd or more inconsistent with itself than this qualification; for while the constitution of parliament recognises the right of the towns, that is the trading classes, to be represented, it compels them to choose for their deputies men who have property in land. As well might it compel counties to choose men in trade for their representatives. A man may have a million in the funds, or as much capital invested in commerce, and he is unfit to represent a commercial town, unless he has also 300*l.* a-year in real estate. This law, it is needless to say, has always been evaded. The member, being only obliged to have his qualification at the two moments of his being elected and taking his seat, obtains a conveyance of property, which he, immediately after taking his seat, re-conveys.

It must, however, be added that nothing can be more speculative or less practical than the great objection which some extreme reformers have taken to the representation qualification. They think it excludes men of the middle or inferior classes from parliament, and they therefore propose not only to abolish this qualification, but to pay the members for their services, as they were paid in ancient times. The only result of this would be a considerable increase of bribery. The payment might have some effect, though but little, if any, because the persons of that class would hardly ever choose to elect one of their own body, from the jealousy which always prevails of one another, and leads them



to prefer their betters. But the removal of the qualification would have no such effect at all. What place, what body of men, would choose artisans or day-labourers to represent them, were the right of voting ever so general? And what artisan or small tradesman could afford to give up his calling and his livelihood, in order to manage the affairs of the country? That men in such circumstances would be more accessible to bribery as representatives than men of independent fortunes needs not be proved. It is self-evident. Their being eligible, therefore, and being in consequence elected, would be no advantage whatever to the community.

3. But the most important of all modifications in restraint of popular rights, is the affixing a certain qualification to the electors, and thus confining the right of choosing representatives to a certain class of the community. The origin of this is partly the pretended alarm about popular violence at elections, partly and chiefly the notion that the people at large cannot safely be trusted with a voice upon the public concerns. The former reason was put forth in the fifteenth century (8 Henry VI.) by our parliament, when they wished to exclude the poorer freeholders from exercising the franchise, the members for counties having before that time been chosen by the County Court, composed of all freeholders without exception, whereas the new statute confined the right to persons possessed of 40*s.* a year, equal to as many pounds at this day. The same alarm has also been constantly given as the reason for our courts of law leaning against general rights of voting in the choice of corporate officers in towns; and its operation had, previous to 1832, by degrees deprived all but a select few among the townfolk of the elective franchise. The Scotch parliament, in the fifteenth century (1469), by a single act confined the right of holding corporate offices to the existing magistrates, who were empowered to fill up all vacancies in their number; and these magistrates alone chose the members of parliament. The towns of the United Provinces, as we have seen, took a similar course a century and a half later; and it has been pretty generally pursued in other parts of the Continent.

But the true and the operative reason for this important restriction is the belief that the people cannot be trusted. They who so think, and unfortunately they have always been a great majority of the persons possessing influence in the legislatures both

of France and of England, have therefore devised a means of confining the right of voting to what they consider as the trustworthy portion of the people, those possessed of a certain amount of wealth, and those possessed of certain corporate rights. The wealth, or the rights, are not so much the matter deemed to be essential as the respectability of the parties. The pecuniary circumstances are supposed to indicate a certain degree of station, and it is thought that persons of this station, having some stake in the country, but, still more, having some information, some knowledge of affairs, and some integrity, will not abuse the right of choosing representatives.

In France the payment of a certain sum in direct taxes is the criterion of respectability. A considerable sum is now required. In the first constitution (1791) only the payment of three days' labour (about half-a-crown) was required for the electors in the Primary Assembly; but two hundred days', or about 12*l.*, for those of the Electoral Colleges. This criterion is not liable to many of the objections which lie against the English test; but it is objectionable, as making the rights of the constituent body depend upon the revenue laws, which may at any moment be so changed as to disfranchise or to enfranchise whole classes of the people.

It is needless to dwell upon the great inconsistency of the English plan, as exemplified in the line which is drawn to sever the voters from the community at large. Thus wealth is taken as a criterion of respectability, and yet a man with a million of funded property, or a million lent upon bond or mortgage, has no vote, while the renter of a hovel is qualified if he pays 10*l.* a-year to the owner. But the gross absurdity is the taking wealth as a criterion, and affixing so small an amount as makes it no criterion at all, even considering wealth to be in certain amounts a true test. If it is to be taken as a criterion, the qualification should be raised, so as to indicate that there is wealth enough possessed to indicate respectability. The 10*l.* rent, or the 40*s.* freehold, really is as bungling a test as a standard of a recruit's fitness for the service would be, which should require that no one be enlisted under four feet high, with the view of providing that the soldiery should be strong enough to go through their duties. Another gross inconsistency of these qualifications is, that while we pretend only to take them as tests of respectability, we no sooner apply them than we forget this, and regard the property as some-

thing sought after for its own sake ; else, why require such property to remain vested in the voter ? If the possession of certain pecuniary means at any one time showed him to be of that class which may safely be entrusted with the elective franchise, does his loss of these pecuniary means degrade him to an inferior class, and make him who was trustworthy last year not to be trusted this ? Are his industry, sobriety, information, judgment, all gone with his money ? At least let us be consistent with ourselves, and admit that, having once been proved to be a fit person, he should be recognised as such ever after. The rule, to have any colour of consistency with itself, should be—"Once a voter always a voter."

But it seems, if possible, more absurd to adopt such a test, or any test at all, unless there is an absolute impossibility of obtaining the quality itself directly, or at least by much easier methods. If the possession of wealth is allowed to be a criterion of sense and information, all must admit it to be liable to error, as the most silly and ignorant of men may have it. So, if it be taken as an evidence of industrious and sober habits, or of general respectability, the same uncertainty must be allowed to attend it. But education, actually received, is a direct proof that the thing in question belongs to the individual. So attending regularly an institution for mental improvement is incompatible with ignorance, and with an idle, dissipated life. But we reject these qualifications altogether ; just as if a chemist were in search of gold to take aqua regia, in which peradventure it might be dissolved, or peradventure it might not, and pass over a piece of the virgin metal itself or the grains of gold dust.

The exclusion which our test effects of some most meritorious and valuable members of society is a grievous evil, and affords a very strong objection to it. All lodgers and boarders, all who have no house of their own, are excluded from the borough representation. The most ingenious artisans ; the men whose expertness and industry are the props of our commercial greatness ; almost all who have carried the arts to so great perfection as rivals the finest performances of any age or country ; the whole body of our mercantile navy, of those whose lives are spent in driving our vast commerce, braving all dangers by their firmness, and overcoming all difficulties by their matchless skill ; most of our literary and scientific men, of those whose unwearied labours illustrate their country and adorn their age, and elevate their

race—all are disfranchised by a law formed for the avowed purpose of drawing the line between ignorance and intelligence. No doubt it does draw the line, and it leaves information on the excluded coast.

But there is a very serious objection to any qualification which depends on property alone. If, as has been already stated, it is low, no test is afforded of respectability; and if it is too high, vast numbers are excluded. In truth, the low qualification which admits the greater number is wholly objectionable on the principle upon which alone all such tests rest, and it either should be much higher, when it would create an oligarchy—or it should be much lower, when it would cease to be a qualification at all either for good or for evil. The mischief of a low qualification is not to be denied or got over. It creates a set of men in every place, limited in number, who have the sole possession of the elective right, and who are thus set up as marks singled out for the arts of the dealer in corruption. There seems no reason to expect that any legislative measure or any judicial severity will ever apply an effectual cure to this crying evil. As long as the place of representative is an object of all men's ambition, many wealthy persons will seek it by means of bribery; and their zealous friends will bribe where themselves might be disposed to refuse an honour so purchased. As long as the means of corruption are possessed, and are thus applied, small constituencies will be the victims of the temptations afforded; and the only real remedy is greatly extending the number of voters, or, if that is impossible, greatly increasing the size of the electoral districts into which the country is divided. If we retain a superstitious veneration for the names of those districts; if we cannot bear to see a new division of the kingdom for political purposes; if our old local associations are too powerful to suffer the outrage of such changes—it is all very well, and we gratify our romantic feelings; but then, let us not shut our eyes to the price which we pay for this sentimental indulgence; it is the perpetuation of the most corrupt practices by which a free people can be debased and degraded; and the spreading of an immorality so glaring, that the lovers of liberty itself are fain to doubt whether popular government may not really be bought too dear at such a cost as the sacrifice of public virtue.

It deserves to be further considered by those who are so friendly.

to exclusion, and so desirous of "walking in the old paths," that qualifications are an invention of after times, having had no place in the original constitution of this country, or indeed of any country which early in the feudal history adopted the system of general assemblies. The barons, great and small, were originally summoned to the council, colloquium, or Parliament, without any distinction. Afterwards the townsfolk were called upon to appear, sometimes at first in person, as in France upon several occasions; generally on the Continent, and always in England, to send representatives. The lesser barons, in this country and afterwards in Scotland, were called to send deputies instead of attending personally. That those freeholders both in England and Scotland all originally voted without any exclusive test whatever, we have the most positive evidence. But there is every reason to believe, that originally the townsfolk also voted without any exception. This appears certain, because there is no record in our history of any one law restraining the franchise and fixing a qualification. No one was, indeed, anxious in those times to be elected; and that which it was reckoned a burthen to receive, it could not be deemed an advantage to bestow. But in hardly any case has the older or common law drawn distinctions and affixed proportions or sums. It would be hard to name any other instance than dower, which was taken from the civil law and founded upon a natural and rational partition of the property into three parts, of which the children should have one, and the deceased's nominees another. The most ancient constitution of this and other countries, therefore, was wholly unacquainted with the doctrine of qualifications.

But this would be nothing like a decisive reason against them, were there material benefit to be derived from their introduction into any given constitution. It may at first be thought evident that this must depend on the kind of constitution into which it is proposed to introduce them. A little more attention, however, to the subject will satisfy us that it is not so, and that the arguments for and against them are the same, of whatever form of government it is proposed to make them a part. The Representative principle can never in any scheme of polity have an object other than admitting the people to a share in the government. The share may be greater, or it may be less; and its amount will depend wholly on the power which, through their

representatives, they are permitted to exercise. But it will not at all depend upon the manner in which those representatives are chosen, or the proportion of the people allowed to choose them. We may suppose a case in which the representatives of the people should have hardly any real influence. If the patrician body or the sovereign had the sole right of originating all measures, or if the power of the purse were taken from the popular assembly, or if a majority of the three estates, the patricians and the sovereign, for example, could legislate for the whole, it is plain that the government would only in name be popular, and it would be as little popular if every man of twenty-one chose the representative, as if only men having a hundred a-year, or paying ten pounds a-year in direct taxes, had the elective franchise. In like manner it would be a popular government if the representatives alone could originate measures, or if the sovereign and the popular assembly could legislate for the whole; and it would be popular whether all the inhabitants, or only a certain proportion, were the electors of that assembly. If indeed the qualification were so high as to throw the choice into the hands of a very small number of the richer and nobler classes, if, as was the case in England before 1832, a majority of the Commons were returned by the patricians, or by those under their immediate control, the government would become aristocratical, but this would not be in consequence of the qualification, properly speaking; it would be in consequence of the people being wholly excluded, and their representatives being chosen for them by the aristocracy, and not by themselves. It is not a Representative Government at all in which such a choice is made. The aristocracy choosing deputies does not constitute a Representative Government. If the British House of Commons were abolished, the government could in no just sense be called Representative, merely because the Irish and Scotch Peerage were represented by deputies of their own choice. We have seen that the popular choice is an essential condition. We mean by a Representative Government one in which the body of the people, either in whole, or in a considerable proportion of the whole, elect their deputies to a chamber of their own. But there are degrees in this. Although, therefore, the qualification in the sense in which we are now taking it would not alter the frame of the constitution according as it was pitched higher or lower, it might make that constitution more or less popular in a

considerable degree, and increase or diminish the influence of the patrician order, and to a certain degree of the sovereign, according to that scale. If the common people were wholly excluded from voting, it would be easier for the influence of patronage, wealth, rank, to exert itself in elections, and the two other estates would thus obtain some kind of influence over the deliberations of the popular assembly. It is equally evident that this ought never to be permitted beyond the narrowest limits, that is to say, the weight which wealth, rank, and power always must possess in every community. To restrict the right of voting for the purpose of augmenting this weight is wholly contrary to the spirit of a mixed government, because that government assigns to each order its own place; and if the patrician body are firm of purpose, they have quite sufficient protection for their privileges in the direct power which they possess of rejecting any measures proposed by the other bodies, and of proposing any measure of their own. If each of the three estates, or of the two, supposing only that number of estates, possess not a veto on all measures, the government is only in name mixed. In that case the amount of the qualification either becomes indifferent, when the government is in reality aristocratic, or it ought to be extremely low, perhaps not to exist at all, when the government is in reality democratic, though it would still be democratic though the qualification should be very considerable.

What then is the advantage of a legitimate kind sought for in a qualification,—and honestly sought for,—not for the purpose of individually aiding the schemes of the other orders, but of fairly working out the principle of the government? It is confined to these two particulars—the securing a better choice of representatives, and the preventing corruption. The former consideration depends upon our distrust of the intelligence of the people at large; the latter upon our distrust of their virtue; and both upon our distrust of the influence which the more intelligent, more virtuous classes can exercise over the inferior members of society. As for the pretence that confusion or riot or any kind of disorder, or even the least inconvenience, could result from the utmost extension of the franchise, no one can now affect to be influenced by it. The Representative principle at once precludes the possibility of any such mischief, because it enables us to subdivide the voters in any degree required by the convenience of the public. Let us

therefore consider the only real advantages ascribed to the qualification, a good choice of representatives, and a check to corruption.

1. Some reasoners have assumed that if all the people were to elect, the classes who are without any property, being the most numerous, would overpower the proprietary classes, and return representatives who would interfere with the rights of property, throw all public burthens upon its owners, perhaps decree its confiscation and division. This assumes first a grosser degree of ignorance and thoughtlessness than can well be supposed in the people of any civilized community, who must know that the only security of society, and the best security for the labourers themselves, arises from the security of proprietary rights. But it also assumes that there is to be a union of the working classes all over the country in order to return this majority. Then if they are likely to combine for the purpose of indirectly effecting the confiscation of property, why do they not now combine for the purpose of seizing upon it directly? For assuredly they possess this power in every country, and yet in none is there any more alarm felt respecting such a measure, than there is an apprehension of the horses in the country combining to kick, or the oxen to gore men to death.—Again, the argument assumes that the other orders of the state are to remain passive spectators of the measures of spoliation, and neither to exert themselves before they are adopted, nor to reject them afterwards when they are presented for their acceptance.—Lastly, the argument assumes that wealth, rank, talents, learning, virtue, are to have no influence whatever in determining the choice of the common people, who are supposed to be so inferior in all these qualities, and who assuredly are so in some of them; whereas many persons have fears of a totally different kind, and dread their being too much under the sway of their superiors. I well remember, when I said to the late Duke of Bedford that his zeal for Parliamentary Reform was all the more creditable to him because it was so disinterested, he having then four close seats and two others which were almost secure: “Not so very disinterested,” was his reply; “for I doubt not I should influence the return of a considerably greater number of members if the suffrage was universal”—which, however, he did not altogether approve. The truth is that the alarms of those who expect a new set of men to be chosen were the whole people instead of a sixth part of them, as at present, represented in Par-



liament, are founded upon a profound ignorance of human nature, and of the relations in which men stand to each other in every social system.

At the same time it must be admitted that some restriction of the franchise would be most desirable, in order to diminish the influence of profligate adventurers, mere traders in politics, and to lessen the risk of popular clamour carrying bad and obstructing good measures. The test of a good education is the best by far, nor does it seem of difficult application. My Education Bills of 1838 and 1839 introduced this as a qualification for voting in parish school meetings; and I then declared it to be one advantage of its adoption for this purpose that it might so easily and so safely be extended to the Parliamentary franchise.

2. That the extension of the franchise tends to the increase of bribery cannot be denied. Nor is there any answer to this great difficulty except what is to be found from considering that, if the qualification must be raised for this reason, we have no alternative but raising it so high as to exclude nine in ten of the present race of voters both in England and in France. But it is most important to observe that the extension of the franchise brings along with it the great and effectual remedy for all corruption. If the universal admission of the people to choose their representatives is accompanied with the abolition of all constituencies under five or six thousand voters, the most effectual check will be afforded to all corrupt practices. It is indeed true that the number of the voters is the real cure, and not the mere extension of the franchise, because a numerous body of a higher description would be the less accessible to bribery. But the division of the country into larger electoral districts, that is, into larger bodies of voters, is greatly facilitated by admitting all classes to vote, and this should be an inducement to confer upon the people the benefits which such an extension in other respects is calculated to secure.

## CHAPTER XI.

## CANONS OF REPRESENTATIVE GOVERNMENT.

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Freedom of the Representative—Non-interference of the People—Overawing the Representative criminal—Representation should be direct—Choice not to be combined—No Representative Qualification—Distribution of Representation by importance of Classes—Numbers alone an insufficient criterion—Great disproportion to population improper—Electoral districts to be large—Elective franchise extended to all educated persons—Secret voting inexpedient, except for tradesmen.

FROM the inquiries in which we have been engaged within the compass of the five last chapters certain general principles may be deduced as governing the theory of representation; and it may be convenient here to state these, as the Canons which may be said to rule the system.

I. The deputy chosen represents the people of the whole community, exercises his own judgment upon all measures, receives freely the communications of his constituents, is not bound by their instructions, though liable to be dismissed by not being re-elected, in case the difference of opinion between him and them is irreconcilable and important.

II. The people's power being transferred to the representative body for a limited time, the people are bound not to exercise their influence so as to control the conduct of their representatives, as a body, on the several measures that come before them.

III. Any proceedings on the part of the people tending to overawe or unduly to influence their representatives upon any given question, though no outrage should be committed, and only an exhibition of numerical force be displayed for these purposes, are contrary to the whole nature of representative government, and in themselves revolutionary, being criminal in the people and doubly criminal in any of their representatives, who thereby commit a flagrant breach of duty.

IV. The best sort of representation is the direct, in which the deputies are chosen by the people, and not by electors whom the people choose.

V. The combination of any other choice or veto with the popular choice is greatly to be reprobated, as an impairing of the pure representative principle; so the representative body itself should have no power of expelling its members except for infamous offences, or the non-payment of lawful debts.

VI. The selection of representatives ought to be free, and the whole community open to the choice of the electors, without any restriction whatever upon eligibility except the period of infancy, or conviction of infamous offences, or actual insolvency declared by judicial sentence.

VII. The distribution of the representation should be such as to secure representatives of all the great classes in the community, which are sufficiently numerous in the combined ratio of the importance of the classes and the numbers comprised in them.

VIII. Population alone cannot safely be taken as the criterion of numbers chosen to represent, and any arrangement is to be reprobated which should give one very large town the choice of too many representatives, by giving it representatives numerous in proportion to its population.

IX. Population should not be so far neglected as to give great inequality to the electoral districts, thus enabling a small body of the people, by their representatives, to control those of a much larger body.

X. Districts should be formed for representation so large as to prevent the corruption of the voters, by the candidates or their friends.

XI. The choice of representatives should be entrusted to all persons of full age, unconvicted of infamous offences, who have received a good plain education; and if a property qualification is adopted, no change or loss of property ought to disfranchise a person once recognised as fit to exercise the right.

XII. The manner of voting should be such as to protect the voter's independence; but the secret vote would in most cases have little influence, and chiefly in the case of tradesmen, while it is liable to grave objections, and is a positive evil if the suffrage be not nearly universal.

## CHAPTER XII.

APPLICATION OF THE REPRESENTATIVE PRINCIPLE—FOUNDATIONS  
OF MIXED GOVERNMENT.

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Universality of the Canons—Risk of popular interference—Its limits—Aristocratic interference through the People—Interference with Elections—Restriction of Franchise does not affect Democracy—Illustrations from the English Commonwealth ; the Dutch ; the French—Illustrations from authors ; Harrington ; Sidney ; Milton—Influence of the other Estates over Popular Representation—King's friends in England—This influence now more difficult—Direct interference of the other Estates criminal—True theory of the Constitution—Securities of the other orders against popular Usurpation—Unwillingness to go to extremities—Defensive Physical Force—Resources of the Sovereign and Aristocracy—Resistance necessarily the foundation of Mixed Government—Mutual right of resistance—Its limits—True use of the doctrine—Objection answered.

THE principles which have been laid down respecting representation, and the observations made respecting its operation on the civil polity of states, are of universal application. They are not confined to one form of government, but extend to every kind of constitution into which the representative system can be introduced. It is however manifest that only two forms of government are compatible with this system, Democracy and Mixed Government. If it be introduced either into a pure aristocracy, or a pure monarchy, the constitution must of necessity undergo a great change from the admixture thus effected by the partial addition of the popular scheme of polity.

1. In a democracy the representative principle has both the freest scope, and is the least exposed to danger of either being impaired or destroyed. The most serious risk to which it is exposed arises from the impatience of the people, and their disposition to take back a portion of the power which they have entrusted to their deputies, by controlling them in its exercise on questions of a peculiarly interesting nature, contrary to the second of the Canons given in the last chapter. The peculiar importance of any measure, either of general legislation or of administrative policy, affords no excuse for this interference ; because each successive occasion will never fail to assume a character of extraordinary im-

portance as the present always does with the bulk of mankind, who habitually fall into the error common to our moral and our natural optics, of mistaking near objects for great ones. That no occasion will ever arise where in a democracy, as in a mixed government, the gross misconduct of the representative body will justify popular interposition, cannot be affirmed. But these occasions are extremely rare, and they are of a revolutionary nature; they are occasions that justify resistance to the established government. In a democracy it may safely be asserted that no occasion will justify the people acting for themselves, and in defiance of their representatives, that would not justify resistance to the sovereign in a monarchy. The cases are precisely similar, and rest on the same principles.

2. The representative system is exposed to another risk from the efforts of powerful individuals and parties to render the government less democratic, and substitute an aristocratic influence for the unmixed dominion of the people. These attempts are almost certain to take one direction, the interference with the representative functions, and introducing popular control. As long as the system remains entire, and the deputies exercise the powers of government, their selection by the people, their responsibility to their constituents, and the powers possessed by the representative body, remove all chance of any faction succeeding in changing the government. But it is otherwise if the supreme power, or any portion of it, be resumed by the people. Then the arts of intriguers, and the corruption to which they resort, make the chances of success far greater. It is also very natural to consider that the representative system supposes in a pure democracy a large extent of territory, else the people would most probably have retained the government in their own hands. Hence popular interference means not the interference of the whole people, nor even of the majority, but the excitement and agitation of some two or three great towns, which may be worked upon by the arts of crafty men; and thus hold out a prospect of enabling an aristocracy, or an oligarchy, to obtain the preponderating influence in the state. Therefore such designs are always sure to be directed towards the resumption of power by the people, and the impairing, perhaps the final destruction, of the representative system.

3. The third danger to which the principle is exposed in a democracy is the interference of parties or powerful individuals with the exercise of the right of election. By means of factious arts

and delusions, and by corrupt practices, the choice of the representatives may be so influenced as to weaken the hold of popular principles over them, and thus to prepare the way for a change in the government after infringing the purity of the representative system. As, however, this course cannot be effectually pursued in a state where there are no privileged orders, from the difficulty of obtaining the consent of the bulk of the people to their own degradation, and from the watchful jealousy which they usually show of all interference with their choice of deputies, though they are far from being as constantly on their guard on the subject of measures which they often scantily comprehend, we may assume that this is by no means an imminent hazard, to which in a democratic commonwealth the representative principle stands exposed.

It may here be observed that the restriction of representation, by excluding large classes of the people from the elective franchise, by no means renders the government other than democratic. We should be guilty of an abuse of ordinary language were we to term such a constitution aristocratic, or oligarchical, or mixed. If we look indeed to the great authorities on these subjects we shall find them all treating a government as republican, by which they usually mean democratic, provided any considerable portion of the people exercise by their delegates the supreme power. Thus the Commonwealth men of the 17th century, like the old Romans, never were very nice in weighing how large a proportion of the people influenced the government, or how long their delegates retained the trust in their own hands, and with how little reference to the wishes of the nation at large they exercised their powers, provided the supreme power was in the hands of many, and not of a single chief. The Long Parliament was elected by the decayed burghs, as well as the great towns and counties. Almost all the negotiations with Charles I. were confined to the powers which the parliament should possess, and turned not upon the mode of its election. The Independents, when they obtained the chief sway in the House, framed a plan of government which only dealt with the parliament's prerogative; and it was not till 1654, under the Protector's constitution, that the decayed burghs were disfranchised, and their members given to the counties.\*—

\* This had been proposed August, 1648, by the Council of Officers. In Cromwell's "Instrument of Government," the universal qualification was the possession of 200*l.* (equal to 500*l.* now) of any kind of property.

So too the Dutch republicans deemed their government a commonwealth long after the principle of self-election had been introduced into their cities, provided the Stadtholder's prerogative was kept subordinate to the authority of the States.—In like manner the republicans of France were much more anxious about preventing a return of the royal family, and a revival of the patrician order, than about the extension of the right of election to the whole body of the citizens. The constitutions which in those countries were formed to the exclusion of large classes from all direct influence on the government, were all Democracies, though not of a pure and simple kind.

As for reasoners upon purely speculative grounds, they appear to have been equally indifferent to the question, except only that some, as Harrington, in sketching the outline of an imaginary commonwealth, have given extensive rights of election.\* In all the discourse of Algernon Sidney upon Government we see constant indications of a rooted dislike to monarchy and ardent love of Democracy; but not a sentence can we find that shows the illustrious author to have regarded the manner in which the people were represented as of any importance; while Milton so entirely summed up his Democratic opinions in the "refusal of one man and the having no House of Lords," that he was intoxicated with joy at the revival of the Long Parliament after Richard Cromwell's deposition, and strenuously contended for the people's representatives being chosen for life.† Both those great men might well take for their motto the lines so appropriately quoted by one of them as describing his faith—

"Manus hæc inimica tyrannis  
Monte petit placidam sub libertate quietem."

It would be difficult to find a more remarkable illustration of the progress which political philosophy has made since those days, than the disregard of the representative system, in all but its name and outward appearance, by the most illustrious friends of popular government, in the age when the freedom of England was, after a long struggle in the senate and in the field, finally won.

In a Mixed government, whether aristocratical or monarchical,

\* He gives it to every man of thirty years old. But his Commonwealth has also a law against the acquisition of unequal property, and for the rotation of offices.—(*Oceana*, 101.)

† *Prose Works*, p. 441 et seq.

the consideration of most importance which offers itself respecting the representative system is its tendency to derange the balance of the constitution and convert it into a democracy more or less pure. This arises from the power of the people being called forth and concentrated by their representatives; and from the undeniable fact, that, when freely used against the privileges of the other orders in the state, these are exposed to a great risk of being overpowered. Hence, for their own defence, the sovereign or the patrician body, or in a government like ours both the one and the other, have always endeavoured to obtain an indirect influence beyond their peculiar privileges, by gaining some hold over the popular representatives in order to avoid the consequences of a collision, which might ensue in case they were driven to use their direct influence over the course of the government. The efforts of which I am now speaking are those made to bias the choice of the electors and occasion the nomination of persons who, being connected with themselves, are sure to favour their interests and views rather than those of their constituents. For there is another source of influence much less direct than this, which is perfectly legitimate and founded in the nature of things. To exemplify the distinction between these two kinds of influence, it may be observed, that the possession in this country of close or nomination boroughs by the government, or by the peers, before the year 1832, gave the sovereign and the aristocracy a direct sway over the assembly in which the constitution required that only the representatives of the people should sit, and only the people should rule; while the wealth, rank, talents, and virtues of the patrician body (the Natural Aristocracy) gave that body, and the respect for the crown gave the sovereign, an indirect influence, besides, which the change of 1832 has not been able to affect.

There are various ways in which the two other estates may directly obtain weight and even control in the popular body. They may interfere in elections by the use of corrupt means to bribe or to intimidate the electors; and they may exert their influence without any corruption, by using their authority, their natural weight with the people, in favour of certain persons devoted to them and to their body. They may also use their influence with the representatives themselves after their election. It is not impossible, though not very common, for several peers to have their agents in our House of Commons: I hardly remember a parliament in which there were



not some few instances of this connexion. The sovereign must, also, have many members in his service, unless, as in France, the ministers are excluded from votes ; but even there they are suffered to have seats and to speak in both the Chambers. When the sovereign, as has frequently happened both here and in France, is obliged to take into his councils a ministry of whose persons or principles he disapproves, he has generally had a trusty band of "king's friends"—men for the most part attached to his service, by holding military or household places, and who act neither as representatives of the people who elect them, nor as supporters of the actual government, but on behalf of the royal person and authority. It is, however, incomparably more difficult now to influence the representatives in the English parliament than it formerly was ; and therefore the attempts of the other two orders, or estates, must be chiefly made to influence the elections. Nor are these attempts as easy as they formerly were, because the conduct of the representatives is now more under the control of the constituents.

This interference of the crown and of the aristocracy is quite contrary to the genius of the representative system, and is a violation of any mixed constitution into which that system enters as a component part. It is all the worse for not being reciprocal. The people have no means of influencing the proceedings either of the aristocracy or of the sovereign, other than through the choice of representatives whose powers are conferred on them by the constitution. If ever the people endeavoured to use their peculiar power, the force of numbers, to overawe the deliberations of the aristocratic assembly, or the councils of the sovereign, there is an illegal act done for which punishment ought to be exacted. If the monarch or the patricians exert their influence to corrupt or intimidate the constituents, or to seduce the representatives from their duty to their constituents, there is an illegal and a punishable act also committed. There is even an irregular, unconstitutional, and reprehensible act done, though it may not be punishable unless as a breach of the privileges of the popular body, if any of the other two estates interferes in any other manner, any manner not strictly speaking illegal, to influence the choice of the representative, or his conduct when chosen. The true theory of the mixed government is, that each of the orders or estates should remain separate from the other, and each possess, independent of the other, its own peculiar powers and privileges.

But there is nothing reprehensible or contrary to the spirit of the system in the other orders gaining influence over the representative body, either indirectly through the electors or directly with the deputies, by means of the Natural Aristocracy and of the reverence for the sovereign. This must ever give those estates a very great weight in that body; and to this must be added, the regard for the stability of the mixed constitution, and, consequently, for the continuance and security of the other orders, as well as their own, which largely influences the people and their deputies. They regard the patricians and the sovereign not as enemies to be attacked, or as adversaries to be struggled against, but as partners in the same concern, with whose co-operation the good of the whole community is to be sought and worked out.

However, the great security and influence of the patrician and royal estates, and their best protection against the third estate, should the exercise of its power be apprehended as overwhelming, is to be found in the legal rights, and privileges, and prerogatives of these other estates. It is of the essence of a mixed government that each estate should have powers independent of all the others, and in the exercise of which it is unaccountable and supreme. But if each estate is not also possessed of some effectual strength, some actual force, wherewith to vindicate its authority when assailed, or enforce its rights when disputed, the government is only in name mixed, and the impotent estate being reduced to a cypher is as if it had no existence. Now there are two kinds of protection for the authority of the estates which possess less strength, less physical force, than the popular body. The one is the reluctance of that body, and especially of its representatives, to bring on a crisis dangerous to the existence of the government, the desire which all the estates must have in common to avoid extremities, in order to consult the general interest. Of this we have already treated fully in examining the doctrine of checks and balances, as well as in other portions of this work (Part II. Chapters II., XI., XIII., XVII.).

The other protection is that which must only be resorted to in cases of extreme necessity, but the means of resorting to which must always be possessed, and the possibility of the resort never be lost sight of—the exertion of physical force. Nor must this be reckoned a desperate chance. The Sovereign has, of course, always the power of protecting his prerogative in such extremities,

by using the force which the constitution entrusts to him, calling upon the civil functionaries to abide by him, and appealing to the military power for his defence. The Aristocracy are far more helpless; but even they are by no means without defence. They form a small body themselves with their families; but they are a body of the greatest courage and fortitude, making an important nucleus or central point round which all may rally who hate injustice and would resist oppression, as well the oppression and injustice of the many as of one—of the people as of the prince. The retainers of the Patrician body must always be very numerous, and they are in general exceedingly attached to their patrons. A large, and well-armed, and high-spirited force could always be raised by this class in their defence were matters urged to a crisis by the encroachments and usurpations of the people. Besides, in a mixed government where there are three estates, the Sovereign would infallibly take part with the privileged orders. It must further be observed that a very considerable portion of the people themselves would prefer this, the side of law and justice, to joining in the excesses of popular usurpation. All men of property must be averse to such a revolution as could only be brought about by the overpowering force of the multitude possessed of no property at all; and it is manifest that the proprietors of all classes form a very numerous body in every civilised community. Take in England only the owners of stock; there are ascertained to be above half a million of these, and they must almost all be averse to popular revolution. They and their connexions would make a very numerous body to rally round the existing order of things, in the event of any attempt to overthrow it by lawless force.

It is needless to repeat that the case here put is an extreme one: the insurrection of the people, by themselves or their representatives, against the established constitution—their attempting by the power of their numbers to overthrow the lawful and undoubted privileges of the other orders in the state. The case is one of a revolutionary kind; the act is, like that of resistance on the part of the subject, only to be justified by the necessity which leaves no alternative. The right of resistance is the foundation, and it is of necessity the foundation, of all popular, all mixed government. The encroachments of the Sovereign upon the rights of the subject, his ruling in defiance of the law, and trampling upon the liberties which the constitution secures to the people, is

a full justification of resistance to his authority. The encroachments of the People upon the rights of the Sovereign, their seeking to destroy his lawful authority, and trample upon the prerogative recognised by the constitution for the good of all, is a full justification of his using force in defence of his authority. As the People cannot resist by the forms of the law, because the Sovereign is supposed to set it at defiance, so he cannot constrain the People by these forms when their proceedings are altogether lawless. As it is not every encroachment of the Sovereign that will justify resistance, but, on the contrary, the evils of the struggle are always to be set against the advantage of restraining the wrong-doer—so it is not every Popular encroachment that will make it lawful for the Sovereign to use the force with which he is entrusted in order to put down lawless proceedings. The evils must in both cases have become intolerable before the resistance is to be attempted, and the probability of success is to be weighed in order that a hopeless attempt may not involve the community in distress and confusion. Above all, in either case, the parties whose rights are invaded must first exhaust every peaceful, and orderly, and lawful means of obtaining redress, and must never think of arms until laws have failed to protect them.

The most important application of this principle, as the most beneficial use of resistance, is its tendency to prevent one power in the state from encroaching and usurping upon the others. When the monarch is aware that his infraction of the laws, and his use against the constitution of the force which is committed to him for its support, will be the resistance of the people in its defence, he is deterred from harbouring unlawful wishes, or from embodying them in treasonable designs. When the people are aware that their force, if used to subvert the established government, would be divided against itself, and that they would encounter a vigorous opposition from the other orders, they are not likely to follow leaders who would betray them to their ruin.

But it may be said that the view here taken of the right of resistance when the people are resolved to change the form of their government is contrary to the undoubted maxims that all government is for the people's good, and that the people have a right to change it if they please. To this the answer is at hand. The people have that right; but it is of a revolutionary nature, and assumes society to be resolved into its elements. As long as

a certain form of government is established, the presumption is that the good of the whole, and especially of the people, is best consulted by its maintenance, and requires it to be supported. The different orders in the state can have no other rule to guide them. All must act as if their duty to the community bound each to maintain its own rights and privileges. All must assume that the existing order of things is right ; and until overpowering necessity compels their submission, all must resist encroachment and change.

## CHAPTER XIII.

## EXERCISE OF POPULAR POWER.

Mode of the people exercising power does not affect the Democratic form—Delegation of Executive Functions—Of Judicial Functions—Limits of the proposition—Judicial Usurpations; Israel; Carthage; Sardinia—Judicial Functions at Rome; Athens—Mode of exercising Popular Power—Necessity of preventing rashness and violence—Evils of numerous assemblies—Mob proceedings—Three Checks on rash decisions—These do not lessen Popular Power—Delay; Notices; Stages—Discussion by several bodies—Long period of delegation—Objectionable checks—Initiative—Fixed majority—Prohibition of Repeal—Examples—Penalties on Innovation—Athenian Checks of the right kind—Of the wrong kind—American Checks of both kinds—Three checks always existing without positive law—Orders of proceeding; Experience of business; Contention of different classes.

THE manner in which the people may exercise their power is not material to the existence of a Democracy, provided that power, undivided, is either retained in their own hands, or only parted with to persons of their own choice, and for so short a time as to keep the delegates accountable and answerable to their constituents. We have seen that a representative body being appointed to exercise the trust does not render the government the less Democratic.

1. So neither does the delegation of executive functions to one or more persons, or to a council, render the government the less Democratic. In fact some delegation of this sort is matter of necessity, because no popular assembly ever can perform all the executive functions of any government. The Athenian assemblies approached as near this inconvenient state of things as it is possible to conceive, because particular measures, as well as the appointment of commanders and other office-bearers, were discussed and decided in those meetings. Yet even at Athens there were magistrates entrusted with executive functions. So in the mixed or aristocratic Commonwealth of Rome there were various branches of administration conducted by the senate and the comitia, such as the adoption of particular measures, and the nomination of particular office-bearers, civil and military. Yet

there were many magistrates in whom individually resided the power of executing the laws.

2. *Secondly*, the administration of justice in a Democracy may be wholly parted with by the people to magistrates; and, provided these are of their choice, the Democratic principle is not infringed upon, even if, as is most essential to the due administration of justice, the judicial office should, to secure its perfect independence, be conferred for life. But here we must, of course, be understood as speaking of modern times, when a portion of the judicial duties is left in the hands of the people by the institution of juries; or of those ancient states in which, occasional judges partaking of the administration of justice with the permanent and official judges, all the qualities of a jury belonged to this mixed tribunal as far as regards the Democratic principle. If, indeed, there were neither the ancient nor the modern jurors in those tribunals, and that judges were appointed for life, unless an appeal should be given in all matters, as well of fact as of law, to the popular body or the legislature, it is evident that a power would be created in the state wholly incompatible with Democratic government—a power of the most effective kind, and which would in a very short time subvert the constitution. Indeed we find judges to have been in early times among the persons who, by usurpation, were enabled, from possessing the great powers of the judicial office, and clothing themselves with the respect naturally its property, to obtain sovereign authority and rule as monarchs over the people who originally had chosen them. It was so in Israel for many ages; and although some dispute prevails as to the duration of the power of the judges—one holding it to have been two hundred and ninety-nine years, another, from St. Paul's authority, four hundred and fifty—and although there is some uncertainty as to their appointment, it cannot be doubted that their original functions were judicial, and that their sovereign authority, held for life, though without inheritance, was usurped from the influence thus acquired.—The *Suffetes* at Carthage, in all probability, derived their authority from a similar usurpation; for the name is certainly Tyrian, like the colony which founded that famous commonwealth; and it must be the same with the Hebrew *Shophet*, judge, the *s* being used by the Latins, who had no such sound as *sh* in their language.—Again, we have seen that in the twelfth and thirteenth centuries the island of Sardinia was

governed by four sovereigns, originally judges, who had usurped regal authority (Part I. Chap. XIX., S. 2). In the ancient republics many of the judicial functions were exercised by the popular assemblies. We have seen how this policy in Athens gave jurisdiction to the largest bodies of the people (Part II. Chap. XVII.); and even at Rome, though the judicial system was far less imperfect, the legislative and judicial functions never were kept sufficiently distinct (Part II. Chap. XII.).

3. But it is not only in the delegation of powers sometimes better exercised, sometimes only possible to be exercised by individuals or by very small bodies, that the authority of the people in a Democracy may be directed, and to a certain degree restrained in its exercise, without impairing the Democratic principle or making the government mixed. The legislative power itself may be exercised under various restraints, and in a manner effectually to impose laws upon the sovereign people, without any real alteration of the Democracy. This subject is of great importance, and the right understanding of it precludes a variety of errors which have been committed by the enemies of popular government. It therefore requires an attentive consideration.

As we have repeatedly observed, the possessors of the supreme power in any constitution do not really restrain that power or alter the nature of that constitution by adopting a peculiar mode of exercising the permanent authority. Thus the sovereign in an absolute monarchy retains the undivided and uncontrolled power, although he may please to exercise it through councils, provided these are appointed by him, have no authority beyond that which he entrusts to them, and are at his pleasure displaced (Part I. Chap. II.). The monarchy may even, as we have seen, be made the more pure and absolute by such arrangements of its functions. So the people in a Democracy may exercise their legislative power under such limitations as not only shall avoid any introduction of a mixed government, any risk of destroying the Democratic character of the constitution, but may render that character more stable, and keep it equally pure as if each act of state were done by the assembled people. Care must only be taken to introduce no permanent authority independent of the people, no power restraining the legislative authority, and placed beyond the popular control.

It is of the greatest possible importance that the proceedings of



the people in making the laws which are to govern them, and deciding in the last resort upon the important questions which arise regarding the administration of their affairs, should be conducted in such a manner as to prevent the errors and miscarriages which arise from haste and inadvertence, from ignorance, and from the influence of heated passions. If a single deliberation, and the resolution formed upon it, were to decide every important matter, any assembly, but more especially any numerous assembly, thus conducting the affairs of a community would inevitably work its ruin in a very short time. This must happen as long as men are fallible, and have not the gift of perfect circumspection and fore-knowledge. Their only security lies in supplying that want by slowness of decision, by repeated consideration, by giving every opportunity to objectors, and taking all the chances which delay affords for further lights and more mature reflection. So it is with any council, however composed, but a numerous body is sure to be composed of more ignorant and incapable than well-informed and wise individuals. A single, sudden resolution will therefore be the determination of the less capable and worst informed; the influence of the better class requiring time in order to produce its effects. With time that class generally will be found to prevail, especially in a body whom we are supposing to have no sinister views, but to be deciding upon its own most important interests. But there is another reason why this slowness to decide must ever be more essential in the case of a popular body, and the more essential in proportion as the body is numerous. The passions are easily excited in large assemblages of the people. A sudden alarm produces a universal panic, which sets all reason at defiance; a false statement, if the charge be calculated to arouse indignation against either a man or a measure, is too readily believed, man's nature being unfortunately not prone to require stronger proof the worse the accusation is, but to let their abhorrence of the supposed matter open their ears to the tale; sanguine hopes may be built on foundations as shadowy as those on which fears are raised; the emotions of pity may be excited by a pathetic representation in favour of the worst of criminals; the feelings of affection may be roused on behalf of the most despicable impostors; in short there is no delusion into which a multitude may not be led by the efforts of eloquence, or the yet greater powers of falsehood. Hence the errors of a mob, and its violence,

its headstrong impatience, its deafness to reason, its proneness to cruelty, are proverbial in all countries and in every stage of society. It is certain that the more men are educated, and the greater experience in self-government they have gained, the less they are exposed to such risk of errors and of crimes; yet there is something in the nature of great assemblies that forbids us ever to expect they should be otherwise than liable to the misleading influence of strong emotions. It is even possible that some physical circumstances may enter into this question. We know that certain maladies are contagious from the mere sight of persons stricken with them. Fits are known to have this effect on those who witness them. Hysterical affections are contagious in a public meeting. Epilepsy itself was so common in the Roman assemblies that it was termed the *morbis comitalis*. The presence of great numbers produces a contagious sympathy. Men, from merely knowing that others are affected, become irritable, nervous, unable to control their feelings. The same individuals have different sentiments, come to different resolutions, possess themselves in more firmness and calmness, in a smaller meeting.

All these considerations dictate the absolute necessity of important questions being either discussed and decided by a smaller body of the people; or, *secondly*, at different times, allowing a due interval for reflection; or, *thirdly*, by different bodies; or, *lastly*, with all these precautions together. We have seen how important a security against the mischiefs of popular assemblies is afforded by the representative principle. But this is not sufficient; for the assembly of the representatives themselves is, though in a much less degree, subject to the same risks of misdecision from ignorance, deception, passion. Therefore the supreme power, even when entrusted to representatives, must, for the safety of the people, and for the same reasons which require the delegation, be exercised in a certain fixed manner and under certain material restraints, voluntarily imposed, and which may be varied at any time, if found inconsistent with freedom and with popular rights.

The three principal checks upon rash and erroneous decisions are therefore these—delay interposed between any proposition and its final adoption; the requirement that it be submitted to more than one body of popular representatives; and the independence of the bodies entrusted by the people, within reasonable limits consistent with their being responsible.

By adopting such courses the people can in no sense be said to part with the whole, or even with any portion, of their supreme power. No man who in the paroxysm of a brain-fever submits to restraint deems his personal liberty infringed. No man who makes a point of submitting his financial affairs to a skilful accountant, or his legal proceedings to a learned adviser, supposes that he parts with the management of his concerns. No man who makes it a rule never to give away a living or other place in his gift, without allowing a certain period after its becoming vacant to elapse, thinks he restrains his power of appointment. He who from distrust of his judgment or his feelings on each individual case lays down a general rule, from which he will not swerve, only feels himself the more safe, without being the less free. Nay, if he even ties himself up by a trust-deed, he only carries the measure necessary for his own protection into more complete effect, without sacrificing his liberty or his rights. So the people are as supreme, in every rational sense of the word, in a constitution which requires a certain delay before any resolution can be taken, or a double discussion, and the assent of two bodies, before it can be made binding, as they would were no such salutary course of proceeding chalked out and defined by the fundamental laws of the Democracy. It is only requisite that both the bodies should owe their origin to the popular choice, hold their commission from the people, and be liable in a period of two or three years to be re-elected or displaced by the people.

1. The allowing time for deliberation, the first of the precautions stated above, is so plain and simple a matter as to require no further elucidation. It may be accomplished by requiring notices, or by referring in the first instance to committees of inquiry, and only proceeding on their report, or, which is the only effectual course, by requiring repeated stages through which the resolution should pass before it can be made final.

2. The examination by two or more bodies, say by one after the other has fully discussed and adopted any measure, may either be a mere addition to the delay, or it may be a new security of a different kind, according as the two bodies are similar in their constitution, or differ from one another. If the same electors choose both from the same classes of eligible persons, and for the same period of time, then it is plain that the only effect of the double discussion is an increased delay and so many

more stages of discussion, as if these had been required to be gone through by the body in which the measure originated. But if either the electors of the two bodies are different, or the persons eligible are different, or the periods for which they are elected are different, the double examination will afford an additional security against error; because the two bodies will in the two former cases represent different classes, and in the third case they will act with different views and feelings, being more or less dependent on the constituents, that is on the people at large, according as their tenure of place is shorter or longer. This difference in the structure of the two bodies will of necessity give rise to a different consideration of the same subject, will occasion a much more full scrutiny of each measure, and will more effectually prevent rashness, and violence, and error.

3. In like manner, the giving a very short period to the trust delegated by the people must always have the effect of making the representatives mere agents in the hands of their constituents. All the mistakes and passions of the people will be reflected in their deputies. Every popular clamour and all the prejudices of the ignorant or fickle multitude will sway the representative body, and the main purpose of representation will be defeated. Yearly elections are therefore sure to produce the worst effects; unless indeed their inconvenience and the indifference likely to arise from a constant repetition of the same proceeding, gives rise to a continuing of the representatives once chosen, and the making elections a mere form, as they become in many corporate and other bodies which adopt this plan, the office-bearers in which, when once chosen, are found really to hold their places for life, notwithstanding a yearly election. Three years may be deemed the term on every account most desirable as a protection at once to the representatives for their independence, and to the people for their power.

Beside the methods which have now been considered, others may be resorted to in order to regulate, and as it were temper, the exercise of the popular will; but these are in themselves very objectionable; the true regulators, the proper balance-wheels, are those which have been described.

1. Among these objectionable methods may first be mentioned the giving to one power only in the state the right to propose, or originate measures, what is called the *initiative*. If the less po-

pular body alone has this privilege many violent proceedings may be prevented, and the excitement of the people by what passes among their representatives may be avoided. In no other respect is this contrivance different from giving to the same body a negative upon the more popular assembly's resolutions.

2. Another contrivance of a still more objectionable kind is the requiring a certain proportion of voices in the representative body to carry any measure of superior importance, as two-thirds or three-fourths, instead of a bare majority. This clumsy device is liable to the manifest objection among others that it must frequently prevent measures being adopted which the public good requires. It also tends to form a party within the bosom of the governing body, and to give a minority undue weight and influence.

3. Nearly akin to this, but still worse, is the expedient of declaring certain laws unalterable, or unalterable till after a certain period has elapsed. Nothing can justify so great an absurdity, but the supposition that the circumstances of the state cannot change in the course of the time prescribed for the duration of the laws, and also the supposition, if possible more groundless, that the makers of them were endowed with perfect wisdom and foresight. The people who so far mistrust themselves as to tie up their own hands, expose themselves to the hazard of any change that may happen, and at the same time prevent themselves from profiting by the lessons of experience.

The most signal instance of such an error in modern times was that of the United States in their federal constitution, and the result was neither more nor less than the Americans being obliged to continue the African slave trade for years after its enormous criminality had been universally confessed, and its danger to the country that carried it on had become daily more imminent.

4. The exposing persons who rashly propound innovations to peculiar risks by punishing them if they fail, is another, and if possible a more objectionable expedient adopted with the same view. Of this it may safely be pronounced that it never can prevent the mischief apprehended, and may often prove injurious to the state as well as oppressive to individuals. When the popular clamour is favourable to the proposed change, it is safe to bring it forward, and this is the very occasion on which the check

is required. When the fickleness of the multitude leaves the proposer in peril, he is sacrificed because he trusted them, and they betrayed him. When a measure may be wholesome though unpopular, fear of incurring the penalty will prevent it from being brought forward, at the very time that the public good may most require it.

All such devices as we have now been considering are devised by political artists nearly as clumsy as the mechanician would be who, instead of appointing a balance-wheel to his watch, should by some rude contrivance interrupt the expansion of the main-spring itself, or stop the movement by which the chain unrolled itself on the fusee.

Of all the expedients, both well and ill advised, which we have described, the history of Democratic governments affords various examples, clearly showing that the necessity of some regulation to the movement of the popular will and power has been felt, and by experience felt, to be absolutely necessary wherever this form of polity has been adopted.

The Athenian constitution, the most purely Democratic of any ever established, interposed frequent delays in the process for altering any old law, or introducing any new one, by requiring various steps to be taken, and requiring also the successive discussion by several bodies differently constituted. The proposition was referred to a select body of the Senate, called *Nomothetes*, fifty in number; the *Prytanes*, to whom these made their report, published it to the city; it was then exercised by other *Nomothetes*, 500 in number, differently chosen from the former; next the *Senate* at large discussed it; afterwards five persons, *Syndics*, were selected for the purpose of defending the old, and of course opposing the new law; and last of all, and after the measure had undergone all these five stages of scrutiny, it was debated and decided upon in the general assembly of the people. Next, no law inconsistent with an old one could be proposed without directly repealing the old one; an admirable rule for any legislature. Again, laws affecting individuals specially, like our bills of pains and penalties, the most tyrannical of popular proceedings, required the presence of 6000 at least in the assembly. Then, many important questions were referred to bodies other than the popular body, and by them finally disposed of. The *Heliea*, though chosen by lot, were not a tenth part so numerous as the

*Ecclesia* or general assembly ; and the *Areopagus* were a selected body chiefly of persons who had held high office, and could pass the scrutiny of the censors, or *Euthyni* ; also, they held their places for life. Beside all these restraints of the proper kind there were others of the description which we have seen to be objectionable. Whoever proposed a new law was liable to be impeached by what was termed the *γραφη παρανομων*, the proceeding for unconstitutional legislation ; and he might be so prosecuted within a year from his proposition having been made, and even when it had been agreed to, in case the law was found detrimental upon trial.—There were many laws which contained a prohibition against all attempts to change them on any account. Finally, there was the gross injustice of the *Ostracism*, contrived to keep down popular men and frustrate ambitious schemes, but which also had a direct operation in disinclining all from “meddling with those which are given to change.”\*

The constitution of the United States abounds in checks, some of the proper kind, others of the imperfect kind ; and the former are contrived mainly upon the principles of the British legislation. Every bill must go through the several stages or readings, commitment, and report, in each assembly, exactly as in our Houses of Parliament. Then the House of Representatives is differently composed from the Senate ; the members must be thirty years old in the latter, twenty-five in the former ; the one body holds its commission for two, and the other for six years ; the members of the one are elected by the people at large ; those of the other by the concurrent voice of the two bodies composing the State Legislatures. Both houses must concur in adopting any measure ; and the chief magistrate or President, not chosen by these bodies, but by the Union at large, must assent, in order to give their joint resolution force ; but if he refuses, then a majority of two-thirds in each house can ensure its adoption. Again, the power of proposing taxes belongs to one house alone, though the other may amend and alter as well as reject—the gross absurdity of our rule of privilege having been properly rejected by the framers of the American government. The President has the power of pardoning all offences, unless in cases of impeachment. The representatives impeach, and the Senate tries the case. Ambassadors are named, treaties concluded, and judges appointed by the President

\* See these checks and balances described in Part II. Ch. xvii.

and two-thirds of the Senate jointly. All judges are irremovable. Lastly, no part of the constitution can be changed without the consent of two-thirds of both houses, a reference to the individual States in the Union, and the approval of three-fourths of their number.

The American government is not deemed to be the less a pure Democracy because of all these checks upon the popular power: but if we look to the still more Democratic government of the French Republic we shall find similar contrivances to regulate the popular will. The constitution of 1793, the most Democratic of all, gave the choice of deputies to the Primary Assemblies, and vested in Electoral bodies, chosen by these assemblies, the power of naming to the legislature the candidates for executive offices, and appointing the criminal judges, whose office was annual. No new law could be proposed but by the report of a committee, nor discussed without a fortnight's notice being given. It must then, if adopted by the legislature, be printed and sent to the parishes of all the eighty-three departments, when, after a delay of forty days, if one-tenth of the voters in the primary assemblies of the majority of the departments (namely one-tenth of the voters in each of forty-two departments) objected, the law was thrown out, though it had been approved by all the legislative body; if less than this number objected, the law so approved was passed. The Constitution of 1795 was less purely Democratic; and it had not more checks upon the popular power. The two Councils of Ancients and Five Hundred were not chosen directly, but by Electoral Colleges, whom the Primary Assemblies chose, but whose members had a property qualification. These colleges appointed the judicial officers as well as the members of the Chambers or Councils. The proposal of laws belonged to the Council of Five Hundred; the consent of the Ancients, or the Two Hundred and Fifty, being required to pass each law; and in both chambers the bill must be read three several times. The members of each Council were elected for three years. The executive power was given to five Directors, each of whom held his office five years, and must be forty years of age. But the question of peace or war belonged to the Councils, though all negotiations, as well as all military operations, were entrusted to the Directory; the assent of the Councils being only required to ratify any treaty concluded.



We may now observe that some material check to the popular will, and some security against rash proceedings, must exist in every constitution of a popular kind from three important circumstances which are necessarily common to all such forms of government, or which naturally grow out of a Democracy, and are, as it were, antecedent to, and independent of, any positive institution, any such artificial contrivances as we have been considering.

In the *first* place, every popular assembly must of necessity, and in order to continue its existence as a place of business, adopt certain rules to govern its proceedings. There must be a certain notice given of its meetings; its members must conform to a certain course necessary for the preservation of order and quiet; its business must be arranged in a certain method; care must be taken to prevent surprise by requiring notice of the things to be propounded; and, above all, the chance of a few deciding for the whole must be excluded by requiring that no proceeding should be had unless a certain number of the body be present.

In the *second* place, the experience which all popular bodies must acquire in the conduct of affairs, under whatever regulations, by the mere frequency of their meeting, forms a very important circumstance in the action of every democracy. If in every operation experience is important and use leads to expertness, in the conduct of public business practice is peculiarly calculated to produce this result. We need not go back to the habits of the Athenian people for an illustration of this proposition, or call to mind the nicety of taste even in judging the highest exertions of the rhetorical art, which the habits of attending their assemblies had given to the Attic multitude. The comparison of public meetings in the metropolis and the provinces,\* or the contrast of the attempts at such proceedings made in France with the meetings in this country, may suffice. However, the infinite superiority which all regularly constituted bodies, meeting at

\* An illustration of the nature of mob government may be taken from the heedless statements of fact, and crude, ill-considered assertions of opinion, in which the periodical press so largely deals. Compare the facts and opinions in a daily paper with those in a monthly or a quarterly publication, and observe the wide difference between the rashness of the one and the more respectable caution of the other. Again, compare the more cautious statements of the London newspapers with the extravagant absurdities which so often fill those of the provinces, less experienced than their brethren of the capital, and you need go no further in order to understand how expertness is gained, from habit and use, by even the multitude for whom those papers cater.

stated times and by rule, must ever have in managing their business, over the best occasional meeting of persons seldom, if ever, brought together, even in a country where such meetings are customary, at a glance strikes the observer, and shows how widely those unreflecting persons err who derive all their impressions of a Democratic government from their observation of the conduct held by multitudes or mobs.

In the *third* place—and this is perhaps of all others the most important check and regulation, because it grows naturally out of the popular frame itself, like as the governor in a steam-engine derives its power from the movement of the machine—if all the members of the community have a voice, should the people act by themselves, but still more if all interests and classes are represented in the case of the people acting by delegation, there must needs arise in the great majority of instances a difference of opinion which of necessity leads to full discussion. Even a small minority, where free scope is given to debate, will suffice to prevent sudden resolves being formed and ill-considered measures being adopted. A few opposing members are sure to gain time. The delay gives them an opportunity of making the reasons against the proposed course be heard and weighed. By the supposition, the people, or their representatives, have only the public good at heart, for it is their own good that they are consulting; and, though they may be ill-advised as to it, they cannot have any corrupt bias to neglect, still more to sacrifice it. They must therefore be open to conviction, and the sense of the majority will in general not be found resolute against the reasons fully urged by an enlightened few. In the greater number of cases this difference of opinion will be likely to secure the state against rashness, violence, and error. In almost all cases it is likely to secure a delay sufficient for obtaining all the information that can be procured, and for bringing forward all the considerations that can be material to a full discussion of each subject.

The particulars which we have now been examining furnish a very satisfactory answer to those in whose minds a Democracy has become synonymous with anarchy or mob-government. When this idea strikes men they picture to themselves what they have witnessed or have heard of as passing at public meetings, where calm deliberation is not to be expected, because it is in truth by no means the thing for which these assemblies are con-

vened. Excitement, mutual inflammation, adoption of propositions previously resolved upon, giving vent to strong sentiments that oppress the mind and demand relief by utterance, the play of the feelings, not the exercise of the understanding; in a word, action, not deliberation, are the objects of the meeting; and accordingly in most cases no one who differs from the multitude ever thinks of attending; all who come have, generally speaking, made up their minds; or where any division of opinion exists, the whole proceeding becomes a scene of fruitless noise, or possibly of dangerous confusion. This is anything rather than a picture of the popular proceedings even in the worst regulated Democracy. They who prefer that form of government praise a regular and feasible system of popular dominion, not the irregular, and uncontrolled, and disorderly proceedings of a lawless multitude. What they mean by a Democracy is such a system as we have been examining, in which, although the people be the mainspring of the machine, their force is both exerted according to certain laws, and combined with other movements which still further direct its action, although it is always the essential characteristic of the system that all these balancing and regulating movements are themselves dependent upon the great mainspring itself, the people's power.

It is true, as we shall afterwards find, that these checks and balances, for this very reason, can never be so effectual in a pure Democracy as in a Mixed government; but we have no right on that account to undervalue them, or to deny their operation, even in the purest Democracy that can be formed.

## CHAPTER XIV.

## VIRTUES OF THE DEMOCRATIC POLITY.

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Rulers have no sinister interest—Personal ambition has no scope—Illustrations; Louis XIV.; Charles XII.; French Republic and Empire; Washington—Progress of improvement—Purity of public men; its two causes—No incapable and wicked Rulers—Benefits of popular Discussion—Cheap Government—Comparison with Monarchy and Aristocracy—Public Defence—Purity of Manners.

WE are now to examine the qualities of the purely Democratic system, that is, the system which, without any monarchical or aristocratic admixture, vests the supreme power in the people.

1. The fundamental peculiarity by which this is distinguished from other forms of government is, that the people having the administration of their own concerns in their own hands, the great cause of misgovernment, the selfish interest of rulers, is wanting, and if the good of the community is sacrificed, it must be owing to incapacity, passion, or ignorance, and not to deliberate evil design. The sovereign in a monarchy pursues his personal interest, and that of his family; the public good is thus sacrificed, and mischiefs arise to the state when its interests clash with those of the prince. The privileged body in an aristocracy seek after the individual interests of their order, or its individual members, still more injuriously to the community, because they are a more numerous body of favoured persons than the sovereign with his family and his courtiers. But no such detriment can arise to the public good under a purely popular government. At least the chances are exceedingly small, and the mischief can only arise from some party, or some individuals, obtaining so much favour with the people at large as to mislead them for their own ends; a thing of necessarily rare occurrence, because there will always be a conflict of parties in a free state, and the people are prone to jealousy and suspicion of all powerful men.

2. It is, perhaps, only another and more limited form of the same proposition, that one great cause of pernicious wars, and of injurious negotiations, is wanting also in a Democracy. The personal ambition of an individual, his feelings of slighted dignity, his sense of personal honour, as well as his desire of aggrandisement, both to gratify his pride or love of glory, and to augment his influence, by extending his powers of obtaining support at home, can have no place under this scheme of polity. There may be ambitious leaders, whose desire would be to plunge their country into war; but the people will naturally be jealous of them, and at all events will be disposed to prevent any one aggrandising himself so as to endanger their liberties. No such unutterable atrocity could ever have been perpetrated in a Democracy as the war in which Louis XIV.'s courtiers plunged their country, and the ravaging of the Palatinate, to distract the pampered tyrant's mind from interfering with their measures at home. No party could have hurried republican Sweden into the ruinous contests by which a sceptred madman exhausted her resources, and annihilated the influence and the name which her valour had gained under his wiser ancestor. To the ambition of the Carnots and the Dantons of the French Republic bounds were set by the popular government, which had ceased long before a single man's desire of universal empire desolated the country by his conscription, and subjected it twice to a foreign yoke. Had the virtuous Washington himself become enamoured of military glory, and desired to extend the dominion of republican institutions over Canada or New Spain, the same people who had begun even to show dissatisfaction with those who, against his will, proposed his third election, and who had refused their commanders leave to perpetuate the renown of their arms by founding an order of merit, would have speedily taught him that war is a game the people are too wise to let their rulers play.

3. The course of legislation in the commonwealth must always keep pace with the improvement of the age. The people, whether acting themselves or through their delegates, and whether these delegates merely follow the instructions of their constituents, or deliberate and decide for themselves, must always communicate to the laws that are made the impression of their own opinions. If the lights and wisdom of their representatives, or of the

leading men among them, exceed, as it must, those of the people at large, their legislation never can fall short of the prevailing civility and refinement. No sinister interests can interfere to check the progress of improvement in the legislature. No prejudices of one class, no selfish views, can have any weight. The alarms of a sovereign and his court at the advances made in this direction, the fears of a privileged order at the progress made in that, never can stop any measures useful to the frame of society. The advancement may be too rapid, for want of the checks and regulations which an aristocratic body supplies, as we before showed (Part II., Chap. VI.). Rash experiments may occasionally be tried; crude ideas may find their place in the acts of the legislature; but the progress of social improvement, the intellectual advances of the age, will be reflected in the laws which the Democratic councils adopt.

4. The administration of public affairs in a Democracy is more certainly pure than in any other form of government. This arises, *first*, from the publicity which must always be given to every proceeding; and, *secondly*, from the entire responsibility of every public functionary to the people or their representatives. Peculation or abuse of any kind becomes hardly possible in men so jealously watched, and sure to be so severely punished if detected. In proportion as any mixed government approaches to the Democratic model, the same purity in its administration becomes more certain. But in no mixed government can the administration ever be so pure as in a Democracy; because wherever there are either privileged orders, or princes and courtiers, there are parties possessed of certain powers and privileges, who have an interest, real or imagined, in the selfish proceedings of themselves or their adherents, that will not bear close scrutiny, and who are enabled to protect in many instances those who are guilty of abuse. In a democracy no such powers or privileges exist.

5. No risk is run in a Democracy, as in a monarchy, of incapable or of wicked men holding the supreme direction of affairs, either in the legislature or in an executive department. The greatest of the evils which beset a monarchy have therefore no place here. No infant in the cradle, no driveling idiot, no furious maniac, no corrupt or vicious profligate, can ever govern the state and bring all authority into hatred or contempt. The

practice of government only renders the men chosen by the people more able to rule, and more worthy of their trust while the possession of power makes the sovereign, generally speaking, more unfit to use it by the tendency of all power to corrupt its holder. The ablest and the best men may always be expected to have authority in a free state. The prince's favourites, and the patrician's connexions, are sure to be preferred in a monarchy and an aristocracy.

6. The ordinary administration of affairs, as well as the course of legislation, benefits by the interposition of the popular voice. All measures are fully discussed, and the chances of great errors or oversights being committed upon any given occasion, are exceedingly diminished. Popular delusion may prevail now and then; and a rash or heedless course may happen in consequence to be pursued. War has often been a favourite with the people, and when they have become alarmed at defeat, or weary of the expense and the suffering of the contest, they have prematurely wished for peace. Yet it cannot be doubted, that as the pursuit of their interest is the main object of all administration, their judgment, likely in the long run to coincide with that interest, is in proportion likely to be sound. It is not the necessary characteristic of a Democratic government, as we have seen (Chap. XIII.), that it should be in the hands of the people at once deliberating, deciding, and acting. Give them time for reflection and inquiry; give the wiser and the better informed among them due weight in the public councils; and the probability is that safe and enlightened policy will be preferred.

It must, however, be observed, that this virtue a Democracy only possesses in contrast with an absolute monarchy. The ignorance, or caprice, or imbecility of a single ruler may, and often must, as has already been seen (Part I. Chaps. v., x.), produce disastrous effects. In an aristocracy it is far otherwise; and there seems little, if any, reason for assigning a superiority of administrative excellence to the Democratic over the aristocratic polity. (Part II. Chap. VI.).

7. The great cheapness of the Democratic government is justly to be numbered among its virtues. The support of a monarchy requires of necessity a large expenditure. The sovereign must be surrounded with a costly magnificence. His person and his family must be amply provided with whatever can contribute

not only to perfect comfort, but to luxurious indulgence, to splendid representation. His court must, at a heavy charge, be provided with office-bearers, of no use to the community except as contributing to the monarch's dignity. An increase in the number of these is even required for the mere purpose of maintaining his influence in the state. An army, considerably larger than the preservation of the public peace or the external defence of the country requires, must be maintained to secure the sovereign from all possibility of attack in any domestic event that may happen. Even the representation of the state with foreign powers demands a more expensive establishment than the simple republicans find necessary. All these things exist in an aristocracy, though to a smaller extent; but here, as well as in a monarchy, the habits of the court, and of the refined society in which the ruling class moves, make the salaries necessary for public functionaries much larger, and greatly increase the number of those functionaries. In a Democracy, the only thing considered is the work to be done; no more officers are employed than that requires; no more is paid for their labour than is an adequate remuneration for it. Even the responsibility imposed upon the public functionary is not compensated by salary; for that, the honour of serving the state is deemed an adequate remuneration. Not only are no useless functionaries employed, but the preservation of the public peace and the support of the government may be secured by an efficient police, and no troops are required but for the public defence; the same constables that seize common offenders protect the persons of all the magistrates.

Thus with a Democracy, even the most popular mixed government will bear no comparison in the article of cheapness. Indeed the court, and its consequential expenses, may fall even heavier on the public purse in a mixed than in a pure monarchy. An aristocracy, like that of Venice, may govern the community with a very moderate expenditure. If Monarchy forms a part of the constitution, its expenses become the heavier from the necessity of maintaining its influence against the conflicting powers of the other orders. Its military establishment may not be larger, if so large; but its civil expenditure is very likely to be more lavish than even a despotism would require. Monarchy in England cannot be supposed to cost so little as from a million



and a half to two millions by the year. But we reckon this large sum well bestowed.

8. The resources of a Democracy for public defence are naturally greater than those of any other form of government. The vigour of the most absolute despotism can only act through the fears of men; and an Aristocracy has neither that lever wherewith to move the mass of the people, nor the same patriotic spirit which animates the subjects of a popular government, though it has far more power of this kind than absolute monarchy can possess. But when of the whole people each one feels an individual interest in the protection of the national independence, they will flock to the standard with other hearts than beat in the bosoms of slaves, who care little to avert a conquest that can only change the persons of their tyrants. Among the resources which the democratic spirit tends directly to call forth, are of course to be reckoned not merely the men, but the money which it places at the disposal of the government. The incredible exertions which free states have made in their defence, when assailed by forces apparently overwhelming, are familiar to every reader; they fill the brightest page in the history of all times. The numbers of men whom small states have raised on such emergencies appear almost beyond belief: as indeed does the gallantry with which they have encountered the far greater force opposed to them. For examples of this democratic spirit we need not travel back to Athens, and Sparta, and Rome; to the days of Marathon, Thermopylæ, Aquæ Sextiæ;\* modern history records the devoted valour of the Switzers perishing for liberty; and the Hollanders, ready to banish themselves from Europe, if in Europe they could no longer live free. Nay, our own days have witnessed in wonder the Americans baffling the skill, and repulsing the force of the best troops in the world; and who can have forgotten the marvellous efforts of the infant republic of France, when her whole people rose in arms against their invaders? But the same people, when sunk into the subjects of an absolute monarch, of whose wars they were weary, no longer answered the calls of their chiefs to arm against the enemy, and twice suffered that enemy to march through an unresisting country to the capital itself.

9. The greater purity in a Democracy is not by any means

\* Aix, where Marius with a handful of men defeated 300,000.

confined to public conduct; a general sobriety and self-command, with the necessity of conforming to the public opinion ever in favour of morals, is an universal characteristic of republican manners. The luxurious indulgence, inseparable from a court, engenders unavoidably a certain corruption, and the vices attendant upon indulgence are never frowned down by courtiers, nor discouraged by courtly example. An Aristocracy is to the full as liable to this observation as a Monarchy. It is indeed rather in so far as the members of a sovereign's court partake of aristocratic habits than as the attendants of a monarchy, that they are subject to such censure. But the republican nature is essentially severe; the virtues of temperance, honesty, public spirit, self-denial, which are exotics in a court, are the common growth of the Democratic soil. No party chief, no popular idol, can ever so far or so long obtain pre-eminence as to inculcate the habits of subserviency, and of fawning, and of falsehood, which too often grow up under the influence of royal or of patrician authority. They who have allowed no other praise to the rulers of the French Democracy in its most exaggerated form have confessed that its cruel aspect was softened by the patriotic feelings, and entitled to command respect by the majesty of republican virtue. The Decemvirs, who for above a year ruled the destinies of France, and disposed of millions without rendering any account, died as poor as the meanest officer who carried into execution the commands of their absolute power. Carnot retired without retaining anything whatever in his possession. Robespierre and St. Just, when put to death, had not above five pounds in the world left of the monthly pittance doled out to each member of the Committee of Public Safety.

Such are the virtues of the Democratic system. Let no one undervalue them; for they are the greatest which any scheme of polity can possess. They all conduce directly and greatly to the happiness of the people; all increase their comforts, maintain their liberties, preserve their tranquillity, improve their virtue. Nor are they to be left out of the reckoning when we proceed to examine the other side of the account, and to view the many considerable vices naturally inherent in this form of polity.

## CHAPTER XV.

## VICES OF THE DEMOCRATIC POLITY.

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Power in irresponsible hands—In hands free from all risk—Irresponsibility of popular Chiefs—Popular Tyranny intolerable—Suspicion and Terror—Flattery of the People—Illustrations; France; England, America—Prevention of free Discussion—Disproportioned attention to different Questions—Power of the periodical Press—of Party—Impunity to popular Outrages—Alleged want of Secrecy and Vigour.

IN treating of the vices incident to Democracy, it must always be kept in mind that we are speaking of its natural tendency, and not affirming the existence of these defects in every instance, or to their full extent. The precautions taken to counteract them in all cases may have produced some effect; in some cases, may have produced a great effect. No government of this class has ever been established without some of those precautions having been taken; and accordingly there never was any example of a Democratic Commonwealth in which the evils towards which purely popular government tends existed in their full extent. Our present inquiry, therefore, is confined to the natural tendency of that species of government.

1. The first and the worst effect of popular government is, that the supreme power is placed in irresponsible hands. The people exercise their office whether of directly governing the country, as in petty commonwealths, or of choosing delegates to perform this function, accountable to no earthly tribunal. Each individual, too, forms so inconsiderable a part of the body which decides in any instance, that he feels little or no responsibility to rest upon him even as regards his own conscience. As for public opinion, from the nature of the thing it exists not, the people themselves being those whose sentiments are meant when public opinion is spoken of. In this respect there is a wide

difference between Democracy and all other forms of government. A sovereign, however absolute, in any civilized country, feels the weight of public censure, and is sensible of public approval. However little freedom of speech there may be under any despotism, the tyrant knows that men think and feel; he is aware that his cruelty and caprices rouse their indignation, that his infirmities awaken their scorn. So the members of an aristocracy, though far less exposed to the same censure, and though numerous enough to support one another under the weight of popular hatred and contempt, nevertheless, as we have seen (Part II. Chap. XXII., *sub fine*), cannot withdraw themselves altogether from the jurisdiction of the popular tribunal, as long as the natural aristocracy has influence, and as long as men live in society. But this check of public opinion cannot influence the people themselves directly. They can only dread having their conduct exposed, and made hateful or despicable in their own eyes, at a moment of calm reflection. This resembles rather the feeble check which conscience imposes upon a tyrant or a patrician oligarchy, than the restraining force of public opinion. It would be exactly the same in its operation, or rather its impotency, with that shadowy restraint of conscience, were it not that men are prone to distrust and suspect each other, and that the people on any occasion of violence or perfidy, of ingratitude or fickleness, will naturally enough look forward to the risk that some of their own body may reprobate or despise the proceeding in contemplation; and may thus be induced to take timely warning, so that they may avoid future exposure to one another.

But it is not only that the holders of supreme power in a Democracy are placed beyond the reach of censure; they are likewise secure from all personal risk. Unless they be split into parties, so that one faction may to-morrow exact vengeance for what another has done to-day, the people as a body never can be punished. Their excesses may prove in the result detrimental to themselves, but for any act of cruelty, ingratitude, treachery, fickleness, they can never be visited with vengeance by the victims of their wrong. The tyrant most fenced about with guards, and exercising the most despotic sway, is always, in proportion to his supremacy, subject to fear—his appointed punishment. Many an act is thus prevented, and many a pain

is thus endured. Even the patrician body, though far less exposed to such risks (Part II. Chap. VI.), is not beyond their possibility; and, accordingly, aristocratic councils, still more those of an oligarchy, are materially influenced by dread of enraging the people. The Venetian government took especial care always to keep the popular feeling on its side, and so we have seen did the Swiss aristocracies (Part II. Chap. XXII., XXVIII.). There was no greater error committed by the aristocracy of ancient Rome than the neglect of the people's feelings, and nothing tended more to produce the civil wars and bloody contests which preyed upon, and at last subverted, that Republic (Part II. Chap. XIII.).

2. The irresponsibility enjoyed of necessity by the people themselves is, to a certain degree at least, communicated to the popular leader. When a party chief is well supported, and possesses great influence over a large body of adherents, he becomes irresponsible in proportion to his following. He cares nothing for the opinion of his adversaries, because they are sure to assail him, and their judgment is considered biassed and worthless. He is secure of the approval of his own side, and he looks not beyond it. For him, therefore, there exists no such tribunal as the public, and no public opinion can have any influence in controlling his proceedings. It is, if possible, worse in the case of there being no division of parties, and all, or nearly all, the people inclining one way. The popular chief in such a case is armed with the power of a tyrant, without feeling any of the tyrant's dread either of the public indignation expressed by way of censure, or of the same indignation breaking out in acts of violence.

It must, however, be observed that this rigour of a popular chief, unless sustained by wise councils and virtuous actions, never can be of long duration. In proportion as the people is ignorant on all subjects, but especially on state affairs and those questions which concern themselves, this influence may be prolonged a little more or less, but in no case can it ever happen that the follies or the wickedness of such leaders should not work the ruin of their power, even over an ignorant community. For the people's own interests being at stake, they will become jealous and suspicious; events will open their eyes; by the event men are prone to judge, and especially when ignorant of

principles; and even the failure of a prudent and right policy may unjustly occasion the downfall of the popular favourite. While his power continues, however, his tyranny is less tolerable than that of any despot; it leaves no escape to its victim, and no redress or consolation under oppression.

3. The same is to be remarked of all popular tyranny, whether spread over the people at large or concentrated, as it generally is, in the hands of certain powerful leaders; there is no escape from it, no redress against it, no solace under it. There is some help and relief to the sufferer who is oppressed by a tyrant or an oligarchy; he has the sympathy of the people. This is withheld from him who is the people's victim; his sufferings are exacerbated by the howl of popular execration or scorn. This has always been felt as a severe aggravation of the wrongs which popular iniquities or caprices inflict; and it is the harder to bear, that it falls heaviest upon the most delicate and sensitive natures. They whom a tyrant destroys at least know that they have earned his hatred; the people's victims may perish because of their services to the power that destroys them. The cruelty of the Parisian multitude, during the sad period of the Reign of Terror, was raised to a pitch altogether unendurable by their savage exultation in the destruction of those patriots and sages who had devoted the best energies of their lives to the service of the people, and the establishment of their liberties. It adds a bitter pang to those sufferings rankling in the hearts of high-spirited men, that their reputation, their fair fame with after ages, is exposed to be tarnished by the same tyrant of many heads, under whose displeasure they have unjustly fallen, possibly condemned for their virtues. The illustrious patriot, whom a despot has doomed to die, may lay down his head on the scaffold in the confident hope that history will avenge his wrongs, and embalm his memory for the veneration of the good in all ages. But if Sidney or Russell had fallen by the voice of a misguided people, they never could have felt sure that the dispensers of punishment might not also prove the dispensers of fame, and sully the reputation of those whom they had destroyed.

4. The same popular tyranny subjects men in a pure democracy to constraint, and mutual suspicion, and terror, exactly like an absolute despotism, with this difference, that it is more easy

to escape the agents of the royal tyrant, than those of the vulgar scourge, the people everywhere scattered abroad. When the predominance of one party in a Democracy has once been fully established, there is no safety for those who differ with it by ever so slight a shade. The majority being overwhelming, all opposition is stifled. No man dares breathe a whisper against the prevailing sentiments; for the popular violence will bear no contradiction. Hence the suppression of wholesome advice, the concealment of useful truths. It becomes dangerous to declare any opinion, however sound, which is unpalatable to the multitude. Truth must no more be told to the tyrant of many heads than to him of one; nay, mere flattery becomes the food generally offered up, and he who goes before others in the extravagance of his doctrines, or the violence of his language, outbids his competitors for popular favour. This vile traffic is alike hurtful to the people and to those who deal in it. The former are pampered and spoilt; the latter are degraded and debased. For instances we need not go far back into history. The agitators in the French revolution were only safe if they adopted the most violent courses that were propounded. Robespierre succeeded by going beyond all others from the beginning of his public life. Marat went even beyond him, and, had not the revolting nature of his doctrine, recommending wholesale murder in plain terms, led men to pause on his honesty, perhaps on his sanity, he would only have been prevented by his death from outstripping Robespierre himself in popular favour. In this country we all can remember the time when it required extraordinary courage among popular chiefs to say a word against reforming, as it was termed, but destroying, as it meant, the House of Lords; and the most thoughtless or the most unprincipled of men actually pledged themselves, on a day fixed, to propose such a senseless measure, only because in so doing they pandered more profusely to the approved popular tastes. In the United States, as all travellers are agreed, the tyranny of the multitude exceeds the bounds of all moderate popular influence. No person dares say anything that thwarts the prevailing prejudices, or the popular opinions of the day.

5. The proneness of the people to violent and unreflecting courses, and the fickleness of their resolutions, are to be classed among the vices of a Democracy; for although checks are, and

of necessity must be, provided against the continual operation of these failings, else the government could not subsist at all, these checks never can be so effectual as wholly to counteract their operation; and accordingly in the best constituted Democracy, the people will occasionally interfere with the functions of their representatives, sometimes with those of the executive government, sometimes even with the administration of justice. The influence of the constituents upon their representatives never can be entirely suspended during the period of the delegated trust. The day of election must always be looked to by the latter, and the deputy's conduct must be more or less influenced by his dread of that ordeal. Hence he will be slow to offend on matters of extreme interest; and each succeeding question is apt for the time, as we have already observed, to be the theme of as extreme anxiety as if there were none other in the political world. If indeed the deputy has good reason to believe that this interest will subside, and that it is not only ephemeral, but unlikely to be awakened when once forgotten, he may follow the dictates of his own judgment. But if the feeling is seated deeply, and likely to be permanent, no representative will venture to resist its current. Who in America, coming from the southern states, will dare propose slave emancipation? Who in France will explain the operation upon agriculture, of equally dividing all lands on the owner's decease? Who in England will show the difficulty of carrying on the government without some nomination boroughs, and the innocence and purity of these compared with the smaller popular places? All these topics may be founded in error; it may be impolitic or unjust to adopt the measures to which their assertion leads; that is not the present question: it is enough for this purpose to affirm, that at least they are highly important, deserving full discussion as experiments never tried, and yet ever since the light of experience has been had whereby to guide us in the inquiry, no one has dared to broach them. And why? Because the people, whose highest interests require their full and deliberate discussion, will not bear them to be so much as mentioned.

6. It is an error and a mischief of a similar kind that subjects receive a very disproportioned degree of consideration in consequence of the course taken by popular taste and feelings. The



question immediately before the public, provided it be of a kind to interest the multitude, is reckoned the only one worth attending to, and the general disposition is to act upon it, as if none other could afterwards arise. Thus a tax would be repealed without regard to the substitute required to replace its produce; a war would be entered into on grounds of feeling, and without regard to policy; a peace hastily made when the war proved for the moment unsuccessful; a favourite rewarded without reference to other claims for which this would lay the ground; an adversary deprived of his rights without regard to the shock thus given to all property. Not only the present question is overrated, but questions of a personal kind, how trifling soever, always rouse the passions most powerfully, and are suffered to engross all attention, excluding the most important subjects which are of a general or a repulsive nature. No account is here taken of the delusions which ignorance of their real good may bring upon the people; and of their readiness to take up, from that ignorance, any wild fancies which crafty men may dress up in plausible colours. Better education can alone provide a remedy for this evil; it is not peculiar to the people; and, even in their uninformed state, they, like all other classes, may by means of free discussion learn to purge their minds of poisonous errors, and to distrust ignorant or designing advisers.

7. In these modern times, when the press has become so prominent a portion of the people that Mr. Windham called it a "Power in Europe," and others have decorated it with the name of a "Fourth estate in the realm," it is impossible to pass over the fact of periodical writing possessing a far greater influence in a Democracy than under any other form of government. The people at large are easily deceived by confident assertion, mistaking its hardihood for the boldness of sincere conviction. They see things positively asserted in print, in the same print in which so many truths are also recorded, but by very different hands; they do not draw the distinction; and above all they never inquire from whom all this body of narrative and dogmatism proceeds. No names are given; and yet this very concealment of the author tends to gain a belief for what he says, because the reader at any rate knows nothing against him. Yet he may be the most worthless, as he is often the most malignant and despicable, of his species; he may be a

creature so utterly insignificant that no human being would attach the smallest importance to either his story or his opinions ; but, without ever reflecting on this, and without ever waiting to ask who says all these things, the people suffer the grossest falsehoods, the merest fabrications, and the most calumnious imputations to pass current, and if repeated, as they may daily be, to find a place in their belief. Whoever has attended to the contents of the American newspapers, and whoever has read those of the French Republic, will confess that they very far surpass in slander, falsehood, and senseless violence the British press. That is assuredly bad enough, but the American is much worse ; and then, in this country, little effect is produced by it on the course of the government. Of late years its indiscriminate scurrility having increased, and its moderate regard for truth been diminished, its influence has become notoriously exceedingly trifling compared with what it was while more decorously and more ably conducted ; but in the United States all its brutal violence, and all the exposures made of the wretches in whose hands it is, have failed signally to lessen its acceptance with the people, and its influence is very considerable upon the administration of public affairs.\*

8. We have, in a former chapter (Part II. Chap. v.), examined at length the effects of party. In a Democracy its sway is fully greater than in any other government ; and in an Aristocracy its worst evils arise from the appeals always made by contending factions to the body of the people whom they endeavour, with too much success, to cajole, to seduce, and to corrupt. Nothing remains to be added in this place.

9. We have in passing adverted to the interference of the people in the government, and even in the administration of justice, above all of criminal justice. Such acts, however, can only be regarded as outrages upon all law, as great crimes committed by the mob rather than the people. Nevertheless, the actors in such enormities may too securely reckon upon protection from a powerful party espousing their cause, and from the slowness of the public officers to do their duty in a country whose institutions make every political functionary, except the

\* Of course, both as to America and this country, these remarks must not be understood as of universal application. There are most honourable exceptions in both countries.

press, answerable to the people at a given time; nay, the judge himself, as far as jurymen adjudicate. It must, I fear, be admitted, that in the United States men escape prosecution, and if prosecuted are saved from conviction in cases of popular violence, which in any government of the old world would, as a matter of course, call forth the most severe visitation of the criminal law. It is quite unnecessary to cite the far more dreadful outrages of mob-violence which stained the French Revolution; nor would it be fair. Those scenes were enacted rather in a crisis of change, and under a kind of anarchy, than in a country subject to a regular Democratic government.

Among the defects of a Democracy no mention has been made of the want of unity and secrecy in its councils, and of vigour and dispatch in its measures of negotiation, of war, and of police. That this form of government is naturally liable to those charges may be admitted; but expedients can so easily be resorted to for supplying the natural defect that it can hardly be worth while to enumerate it among the evils of a Democracy. There never has happened any injury to the United States, either from too great publicity being given to its councils or from the want of a vigorous executive in war; while the history of the French Republic proves unquestionably that the most popular government is not incompatible with the entrusting to individuals as extensive powers, civil and military, as the most extensive and complicated operations, whether of finance, or negotiation, or war, can demand.

## CHAPTER XVI.

## OF RELIGIOUS ESTABLISHMENTS.

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Connexion—Religious Establishments impossible in a Democracy—Peculiarity of Religious differences—Objection that Establishments violate Conscience—That they are made State engines—That they restrain natural Liberty—Benefits—They secure Instruction—Equalise the Burthen—Avoid evils of Election—Check Religious excitement—Prevent Sectarian zeal—Prevent Sectarian political violence.

THE various institutions connected with the happiness of the people will form the subject of consideration under the second of the general heads into which Political Philosophy is divided, the *Functions* of government, as contradistinguished from its *Structure*. These institutions belong, not generally speaking, to one political system rather than another, but may flourish more or less in all, though the genius of some governments is more favourable to many of them than the genius of others; as for example, there is scarcely any likelihood of establishments which presume the existence of public credit, that is the secure possession and free employment of capital, or of institutions for the diffusion of general knowledge, flourishing under a despotic government; nevertheless the existence of such credit and institutions is not absolutely incompatible with despotism itself, and accordingly, though with crippled means, and to a limited extent, they have been known to find a place under even eastern monarchies.

But there is one establishment which appears incompatible with the existence of a Democracy, or at least only compatible under restrictions hardly reconcileable with its healthful growth, and that is a system of religious instruction, endowed and patronized by law, with a preference given to it by the state over all other systems, and a preference given to its teachers over

the teachers of all other forms of belief,—in other words, a Religious Establishment. Where all the people are equal, and no privileged order is recognised, it seems impossible to give a preference by law to the teachers of one class of believers, however numerous these may be compared with all other classes of believers. In matters of a temporal kind, men may differ widely, some approving one doctrine, some another. But were the state to appoint teachers of one of these disputed systems of science, or of morals, or of legislation, and give them an endowment withheld from the teachers of other systems, no material injury would be done to the feelings or the comfort of any class, and the government would be perfectly justified in preferring the teachers of a system tending to support the peculiar policy of the state. It is otherwise with respect to religious instruction. The happiness of men and their most anxious feelings are so deeply interested in their religious tenets, that any preference given by the state to the teaching of religious doctrines which they sincerely believe to be erroneous proves excessively galling to them, and the same persons who could well bear to pay taxes which should go to the propagation of a physical or even of a moral theory deemed by them to be erroneous, would feel seriously aggrieved in paying their contributions towards propagating a religious doctrine which they believed to be false. Not to mention that although a government may have some legitimate interest in the dissemination of moral or political opinions favourable to the policy of the constitution, no government can have any but an unlawful and sinister object in view by seeking the support of any system of religion, or forming a political alliance with its professors.

But there is another reason why no Democratic government can support a National Religion, at least in the modern sense of the term. That in all Christian countries means the endowment of a class set apart from the rest of the community, and forming a peculiar body, a sacred order of men, who hold their functions for life. Even if these men are chosen by the freest election of the people, and removable at the people's pleasure, they are still an order of men whose influence is personal and who are unconnected with the government. This is not consistent with the Democratic scheme. Their being an order of men in choosing whom whole classes of the people are un-

qualified to join, renders their existence still more repugnant to the democratic principle. But it is hardly possible to have an Established Religion, the professors of which are not to hold their situations for life. A greater curse to the peace of a country and the happiness of its society than a priesthood dependent upon the breath of popular favour at every instant, cannot be imagined. Yet the existence of a class endowed by the state, of men possessing great personal weight, and nevertheless unconnected with either the government or with any temporal concerns, and holding their places for life, is wholly repugnant to democracy. The judges being appointed for life is only rendered compatible with purely popular government, by the intermixture of popular influence with their functions, through the appeal to the legislature and through the office of jurors. A clerical order of great influence, paid for life, and subject to no appeal nor to any control, is wholly inconsistent with pure democracy; as much so as an order of knighthood or of nobility.

If it be said that some such plan as is adopted in several of the American commonwealths would reconcile a state religion with a Democracy, namely, obliging every one to pay his tax to the state, but the state giving it over to the minister of whose sect the contributor is a member, the answer is that this may by some be said to constitute no Religious Establishment, because no preference is given to one faith over another. It is only a mode of raising funds for religious instruction; a mode, too, which the advocates of pure Democracy might object to as compelling every man to choose his sect.

We are thus led to inquire whether this impossibility of having an Established Religion in a Democracy be a virtue or a vice of that system; and this raises the question respecting the virtues and vices of Religious Establishments.

The objections to them are extremely manifest; but three of these it may be enough to state, because they seem to comprise all the others.

In the *first* place, it is a serious grievance to any person that he should be compelled to support a religion which he conscientiously disapproves, and this whatever be the form of the government under which he lives. Men are far more sensitive upon religious differences than upon any other differences, or indeed upon almost any other subject. We in vain try to persuade

them that the points upon which they dissent from their neighbours are extremely insignificant compared with those upon which all are agreed. On the contrary, the less the distance which separates two sects, the greater seems generally to be the force that repels them from one another. In vain we try to remind them how much better it is that the bulk of the people, especially the lower orders, should be taught some religion, and kept in some moral restraint by the discipline of some sacred functionary, than that they should go without any instruction or discipline at all. The answer ever at hand is, that such subjects are too sacred to admit of compromise, and that nothing can justify helping to propagate religious errors. In short, experience proves that this is a subject in which the bulk of men feel, and do not reason.

In the *second* place, although religious instruction be the motive of supporting an establishment, the civil magistrate always contrives to gain from that establishment secular support. This is both hurtful to the constitution by introducing a disturbing force which always acts in favour of one party in the state, and it is hurtful to the interests of religion itself by making its teachers political instead of merely religious men, subjecting their doctrines and their conduct to secular influences. "Every idea (says Dr. Paley) of making the church an engine, or even an ally of the state, converting it into a means of strengthening or of diffusing influence, serves only to debase the institution and to introduce into it numerous corruptions and abuses."\*

In the *third* place, the establishment of one religious class tends to the restraint of freedom, both in speech and thought, to intolerant practices, and to obstructing the progress of general improvement. Not only religious discussion is checked, but power and influence is gradually obtained by the predominant sect, and the civil magistrate is induced to extend its influence and to enforce the exclusion of other sects beyond the mere preference given by means of the endowment. The various institutions to the benefit of which members of the Church alone are admitted; the many laws at different times made in all countries to put down dissent; the opposition so often given to useful changes by the privileged body; are all strong illustrations of this proposition.

\* Moral and Political Philosophy, Book vi., Chap. x.

It is commonly objected as a further evil of an establishment, that it imposes upon certain classes of the community a burthen from which others are exempt, the dissenter having to support his pastor, while the churchman is provided with religious instruction for nothing; and if, instead of an endowment in land, or tithes, or both, the state church is supported by taxes, then the dissenter pays a double tribute. The only reason for not enumerating this among the objections to an established church is, that to a certain degree it may be supposed applicable to the purely voluntary system; for the dissenters pay if they choose, and the persons who do pay, suppose there is no establishment, pay by so much more than those who do not. Besides, if it be said that the churchmen benefit by the state clergy, so do the dissenters, both by the learning upon theological subjects which is thus encouraged and diffused, and by the good effects of the clergy's teaching upon the common people. The three objections first stated are the real grounds for opposing the establishment by the state of one system exclusively.

It would be vain to deny the weight of these objections to an Establishment; they are undoubtedly of a very serious kind; and daily experience everywhere bears testimony to their importance. Nevertheless, it seems that upon the whole there result greater mischiefs from having no establishment at all, and that the balance is sensibly in favour of such an institution. This arises from the very peculiar nature of the instruction which religious teachers seek to convey.

1. If the people were left to supply themselves with religious knowledge, and the moral instruction which always accompanies the communication of it, there can be no doubt that they would very often remain without it; at least the classes which most require it would be the least apt to obtain it. For the very want of it implies an ignorance of its value and uses; and hence they who were without it, and to whom it is therefore the most needful, would be for that very reason the last to seek it. This has been so much felt in countries which by the nature of their government could have no state church, that they have fallen upon the expedient already mentioned, of requiring each person to pay a church rate or tax, towards some one minister whom each might choose for himself, a mode of providing for religious



instruction which is liable to manifest objections. But unless some such contrivance be resorted to, this obvious injustice will always be done. They who are sensible and public spirited will pay for those that are not. Whoever chooses to save his money will be able to benefit by the churches which his more liberal neighbour supports. Even if he be not allowed to attend the service in these, he will profit by the improvement in the conduct of those who do; and this injustice and inequality is exactly one of the evils objected in another view to an establishment.—The compelling men to pay for the support of opinions which they do not hold, is another and the main objection; yet, as it is very possible that a person may agree with no one sect in the community, the case of such person falls within the scope of the objection.

2. If the people are to provide for the support of their own pastors, so must they select them also. The objection is quite as great to requiring men's profiting or endeavouring to profit by the ministrations of a state minister, as to requiring their support of a creed they disapprove. Then the office of religious instructor must be elective. Who can doubt the evils to which this must give rise—evils, above all, to religion itself? If any one quality is requisite in a pastor it is his authority with the flock; the teacher must therefore be independent of the hearer. If he holds his place from the congregation, his doctrine must be suited to its palate; he must preach, not the word of God but of man. He must submit to the caprices of the multitude and study popular arts. His character must be degraded far below the debasement of the political demagogue; inasmuch as he has sacrificed much higher things, stooped from a far greater height to reach the necessary pitch of degradation. He who has accommodated his sacred functions to the caprice of the multitude has done an impious act and forfeited all claims upon the respect of rational men by losing his own. Even if the original choice is to be the people's only interference with their pastor, still the process is both unseemly and debasing. The arts of a popular candidate ought never to have a place in the habits of holy men; the pulpit of all places is no place for canvassing. Besides, if the people are split into parties respecting the choice of a minister, as they of course will be when that choice is left free, how are the defeated minority to profit by the ministrations

of the man whose unfitness they have been proclaiming, and even been violent in proclaiming? The result must be, that on every election a secession of the defeated party to hear their own favourite will take place, and thus each congregation will be indefinitely split. However, we are making a groundless, a gratuitous assumption, when we suppose that the people's interference can be confined to the day of election; for a free and voluntary system and the absence of all Establishment presupposes that the pastors are to be provided with funds to support them by the voluntary contributions of their flocks. An endowment or a compulsory provision, leaving the choice in the people, is one form of a Religious Establishment; it is, in fact, the form in which the Scottish national Church was established for several years after the Revolution of 1688. When we speak of the people in any community being without a state church, we mean that they shall not only elect but maintain their religious teachers; and, accordingly, one of the arguments often put forward by those who object to Establishments is their tendency to make the minister careless and indolent in discharging his duties. It is, indeed, the reason mainly relied upon, next to that of the violence done to conscience; and even this may also be urged against the kind of establishment now under discussion; for a pastor chosen for life, and for life endowed, may change his doctrine, may become heterodox as well as indifferent, and then men are compulsorily providing funds for preaching error.

3. It is, perhaps, only giving another form of the same objection, if we observe how very little the people are to be trusted with a discretion upon religious subjects. If their excitement upon political questions is perilous and requires the regulating checks which we have so often discussed (Chap. XIII.), far more is their excitement to be dreaded in matters that appeal directly to the much more powerful feelings connected with religion—matters upon which the bulk of men, in all ages and countries, have been found to feel only and not to reason. The history of the species is full of examples fearfully proving the force of religious impressions in disturbing the judgment and even perverting the whole heart of man, rendering him capable of the most savage, as well as the most absurd actions. It is needless to dwell longer on a topic which at once shows the expediency of an Established

Church, the only effectual means of checking and tempering these overpowering feelings. All the arguments in favour of checks and balances apply to this with redoubled force.

4. The indolence imputed to the Ministers of a State Church may certainly be carried too far; but it is, perhaps, less hurtful, even when thus found in excess, than the extreme activity of the popular sectary. Whoever has well considered the effect of sect striving against sect, of each pulpit being made the place of attack upon its neighbouring chair, of rival expounders seeking to render themselves more precious in the eyes of their hearers by outdoing one another in the rigour of their outward penances, and the extravagance of their awful denunciations; of an active competition even in the vehemence and the mystery of their spiritual dogmas; will confess that quietism is the safer extreme, if into one extreme or the other the religious instructor must run. It is better, as has been said, that a little indolence and quietism should be purchased by a state provision, than that the people should be exposed to all the mischiefs of excessive and fanatical activity, of the zeal which burns with far more heat than light. *Mallet illorum negligentiam, quam istorum pravam diligentiam.* An indolent priesthood, too, is seldom a persecuting one; it is a better because a more peaceable neighbour than an over-zealous volunteer system. Yet there is also a preventive of too great indolence; the activity of sectaries, where toleration is established, will always prevent the state endowment from engendering too great indifference among its ministers.

5. Among the objections to an Establishment we found a very important one in the political uses to which it is capable of being turned, its ready subserviency to the views of the Civil Magistrate. But a great mistake would be committed by any one who should suppose that no secular interference can belong to the most entirely voluntary system of religious instruction. The nature of sectarian priests is to the full as busy as that of an established clergy, and it is more restless, self-confident, and intolerant. For examples of this we need not go back to the seventeenth century. Our own times afford instances in abundance, to prove how easily the sectarian pastor unites with his sacred calling the secular functions of the political agitator.

This is not confined to Ireland; we have experience in this country of its operation; and if any proof were wanting how very easy it is for zealous men to pretend, or perhaps really to feel, a call towards secular politics as a part of their spiritual vocation, let it be remembered, that both in Scotland and in England the purely temporal question of the Corn-laws has in our own day been taken up by a large number of the dissenting ministers of both countries, upon the alleged ground that it is a religious question—a ground, however, disclaimed by all rational statesmen, how strongly soever attached to the opinion which these zealots supported. There is, in truth, no one question which such persons may not represent as falling within the scope of their sacred ministry; and if the whole community were under their guidance in spiritual matters, its civil administration, if it fell not into their hands, would at least be materially affected by their influence.

It is certainly, if not a positive benefit resulting from an established church, a very great set-off against the inconvenience of its political subserviency, that it enables the government to be administered without any serious obstruction arising from the operation of public feelings excited by spiritual guides. The influence of the state over the pastors of the people may be sometimes abused to civil purposes; but the nature of religious zeal cannot permit us to doubt that this is a far less mischief than the existence of an all-powerful and wholly independent clergy in any community.

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It thus appears that among the evils of a pure Democracy is to be reckoned the necessary want of an Establishment for religious instruction, and the mischief that arises in a secular view from the unrestrained acting and fierce zeal of rival sects working upon the minds of the people. Their influence, of course, will be much more universal and powerful in a community which admits of no privileged orders, no distinction of ranks; a community in which all public functionaries, including jurors themselves, are under the perpetual superintendence and control of popular opinion and popular feelings.

In the deductions which we have stated on this important

subject, as in every other part of our inquiries, we have made no allowance for the ultimate effects of Education. In no respect are these more fit to be considered than in their connexion with Religion and with Ecclesiastical polity. But this forms a separate subject, and as yet we have been throughout considering the state of society as we at present find it

## CHAPTER XVII.

## PROVINCIAL AND COLONIAL ESTABLISHMENTS.

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Popular ignorance and inattention on Provincial affairs—Jealousy—Illustrations from America ; from Canada—No natural Incapacity in Democracy—Roman History origin of the opinion—Roman Policy—Carthaginian Policy—Grecian Policy—Dutch Policy—Conduct of Spain—General inference.

It is a very ordinary subject of complaint against Democratic Commonwealths that they always maltreat their provinces and their colonies. There may be some ground for this charge ; because there is certainly a great disposition in the people of any country to regard exclusively the interests and feelings of the community to which they belong, and it always will be difficult to fix the attention of any nation upon the concerns of its remote possessions. The knowledge of detail, indeed, which the due understanding of such subjects requires, can hardly ever be obtained by the people at large in any country. The affairs of their home government, and domestic economy, are pretty generally understood, at least in their outline : the affairs of distant settlements, in circumstances so unlike anything that they are acquainted with at home, can hardly be comprehended at all.

But it is not merely from ignorance or inattention that the people are likely to misgovern their remote provinces. The feeling of jealousy, or alienation, or whatever it is that gives the people of every country a prejudice against foreigners, enters largely into the sentiments with which the provincial inhabitants are regarded. They are, considered, too, as a subordinate class, as not only a foreign, but also a subject nation. Their interests are supposed to be wholly subservient to those of the parent state. Their resistance to its commands is resented as something rebellious and unnatural. No account is taken of the balance

of debt and credit between the two parties, in regard of benefits conferred and received reciprocally. All is assumed to have been bestowed by the Parent State at her expense, and nothing gained by her at the expense of the Province.

It is, lastly, to be borne in mind, that while the people at home are themselves the rulers, or rule by delegates of their own choice, the inhabitants of the distant provinces have no direct share in the government; they are not represented by men of their choosing; if they are permitted to manage their domestic concerns, it is all that they can expect; even that power is constantly curbed and interfered with where the interests of the people at home may seem to require it; and the weakness of the Colony or Province exposes it to be at all times oppressed, should the disposition of the governing people prompt such a course.

It is better to avoid, if possible, all invidious allusions on this somewhat delicate subject. But the truth of history, both more and less recent, requires us to reflect upon the conduct of the people in this country towards our American fellow subjects. The American war was extremely popular in Great Britain for some years, and only ceased to be the favourite of the nation when its disastrous effects had increased our burthens, doubled our public debt, and lowered the reputation both of our Councils and of our Arms. The Colonists were reprobated as rebels who had dared to revolt and set at defiance the power of the country which founded their settlements. The great advantages for so many ages derived by England, almost all at the expense of the Colonies, were wholly forgotten; and they who had in reality paid so dearly for all our gains were treated as guilty of black ingratitude, only because they refused to let those who had been so long profiting by their mercantile oppression reduce them to the still more abject slavery of political subjection. Yet all who most sensibly felt for the glory of England held fast by this gross delusion. Even the staunchest friends of freedom at home would suffer no exportation of that precious article; and Lord Chatham himself lived and died in the equal reprobation of Colonial independence and of Ministerial incapacity, in conducting the war to extinguish it.—So of late years, the Canadians having claimed to enjoy a more entire control over the moneys raised from them to support the public ex-

penses, and having in one small district committed unjustifiable outrages, the whole constitution of the Province, as secured by Statute, was suspended, and dictators appointed to govern them with absolute power. Yet this was done without a murmur from any part of the people in England, or Scotland, or Ireland, some of whom would have risen in rebellion, and others loudly threatened to rise, had the constitution been suspended at home in any one Borough-town that sent representatives to Parliament. This silence, too, was preserved unbroken, nay, the rigorous measures against the Canadians were fully approved, by the very parties both in Parliament and in the Country, who affect upon every occasion the most tender regard for popular rights, and are always the foremost in demanding an extension of the people's privileges and power.

It must however, in justice towards the Democratic polity, be admitted, that there seems no fundamental incapacity of a purely popular government to administer its provincial affairs justly, and prudently, any more than to conduct its Foreign affairs, its negotiations, and its wars. Ignorance of their real interests, and culpable neglect of justice, may mislead the people in a Democracy as they may mislead the rulers under any other constitution. Such impolicy and injustice may be fitly reprehended, and it is a wise and virtuous Statesman's duty to expose and to resist it. But there seems nothing in the form of a popular government which is incompatible with politic and equitable administration of its Provincial affairs.

The Roman History has probably on this question misled most inquirers; certainly, it is upon this that Mr. Hume has grounded his proposition, which he reckons among those undoubted principles of political science, that free States are always the most oppressive to their provinces.\* It is impossible to deny that the barbarous people of Rome treated their foreign subjects with grievous injustice and harshness. We have seen it fully, both in the second part of this work and in the seventh chapter of this part. But we must bear in mind the peculiarities of the Roman State and its Colonies. A single city, with a very small surrounding territory, resolved to conquer, first, all Italy, and then the world. Its whole policy was formed upon

\* Essays, iii.



this scheme of universal aggression. Each acquisition was treated as a foreign conquest; and the Colonies of Roman citizens, successively planted in those conquered territories, were placed there for the purpose of keeping the inhabitants in subjection; they were advanced posts of the central army at Rome; they were military stations, to be maintained and governed as detachments of the public force quartered in an enemy's country. The natives were treated with various measures of harshness, but always as conquered tribes. The colonists were more kindly treated, but always as men under strict military discipline, and who were sent on a service of their employers or commanders, and not for their own ease and interest. Accordingly, all the proceedings, both in those colonies and in the provinces at large, were of a military nature. They were regarded, the provinces as recruiting grounds for the Roman army, the colonies, as stations representing the city, and aiding the provincial magistrates sent from Rome to rule the vanquished people. The quæstor yearly reported the means of aiding the state by their returns of wealth and of men able to bear arms. The maritime territories contributed by their seamen to equip the navy; their inhabitants always served in the Roman fleets. But it was really the Patrician and not the Democratic oppression that the remote parts of the Empire felt most grievous. Accordingly, when the Commonwealth was overthrown, we are told by Tacitus that the Provinces felt not at all averse to the change, holding in natural dislike the Senatorial and Aristocratic domination; and he states, with his accustomed precision and conciseness, in what manner this yoke had chiefly galled them. "*Certamina potentum, avaritia magistratûm, invalido legum auxilio, quæ vi, ambitû, postremo pecuniâ turbabantur.*"\* Accordingly, Cicero tells us that the repeal of the laws to prevent proconsular oppression would have been the greatest mitigation of it, as in that case those magistrates would only have plundered for their own gratification, instead of also extorting enough to obtain impunity by corruption at home. It is plain that all these vexations belong to the Aristocracy of Rome, the most profligate and unprincipled ever known. There is nothing in the facts affecting the Democratic regimen.

\* Ann., Lib. i. cap. 2.

The Carthaginian History is, as we have had frequent occasion to remark and to lament, far more meagre than that of any other ancient state, although it would have been the most interesting of all ancient annals next to those of Rome and Athens. It appears that the army was chiefly composed of mercenary troops raised from all the countries bordering on the Mediterranean; and the celebrated description which Livy gives of Hannibal's army, in all probability, was applicable to the forces generally which Carthage sent into the field, as well as those with which she overran first Spain and then Italy. The Colonies of Carthage appear to have much more nearly resembled the settlements of modern times. For although they were so far planted like those of Rome in conquered countries, and were not, like those of Greece and of modern Europe, established in order to carry off the surplus population from the mother country, yet the only benefit which Carthage derived from them beside the strengthening of her hold over the conquered nations was the trade, which she appears to have kept exclusively to herself. Polybius\* has preserved two very curious Treaties made with Rome; one of them as early as the beginning of the Republic immediately after the expulsion of the Tarquins, and which allows the Romans, whose commerce was then in its infancy, to trade with the Carthaginian settlements in Sicily and on the African coast. The other Treaty was made at a somewhat later period, when the spirit of commercial jealousy had been awakened, and it prohibits the Romans from entering the ports either of the African, or Sicilian, or Sardinian Colonies of Carthage, unless driven thither by stress of weather, and expressly forbids them to "plunder, trade, or settle."

The Greek Colonies were all planted, both those of the Dorians in Sicily and Italy, and those of the Ionians and Æolians in Asia, with the view of finding an outlet for the surplus people of the Greek cities, surrounded as they were, each of them, by hostile neighbours, and therefore unable to extend their territories. The names, as Dr. Smith has observed, indicate the difference between these and the Roman Settlements; the latter were termed "*coloniæ*"—plantations; the former *αποικισμὸς*—emigrations; leaving of home. Accordingly, nothing like tyranny appears to have been exercised over them by the

\* Lib. iii. cap. 22.

Metropolis, the parent city or state. The colonists governed themselves as they pleased ; they were expected to feel kindly and respectfully towards the mother country, and not to enter into any hostile proceedings against her ; and she in return, when she could, gave them succour and protection. Thucydides has preserved a kind of debate between the Corinthians and their Colonists of Corcyra, in which the former complain that the latter alone, of all other Colonists, have taken engagements with their enemies. They affirm, as a thing universally known, that their kindness towards all their other Colonies had uniformly obtained from them the return of affection and respect, which Corcyra alone had withheld.\*

The Dutch republicans are supposed to have governed their valuable Colonies worse than any other nation in modern times. Certainly they have fallen into political errors and worse crimes, not easily to be understood in so sensible, so reflecting, and so worthy a people. The powers given, at the beginning of the seventeenth century, to their East India Company, greatly exceeded any that were ever granted by other countries to trading Corporations of this description. They had the absolute right, not only of administration but of conquest, of negotiation, of making war and peace, of conducting military operations, of exclusive trade, and of legislation in all its branches. The different great towns in the United Provinces named each so many of the Sixty Directors. The Company kept always on foot a large army and navy, amounting, at the end of the last century, to 80 ships of war of from 30 to 60 guns, and 25,000 men. The misgovernment of the Settlements thus administered, or rather thus abandoned, by the State, became proverbial under this powerful body ; and the cruelties exercised, both against their subjects, the native powers, and the Europeans who attempted to interfere with the monopoly, have made the Dutch name odious in the East. The power of making laws was, among other enormities, exerted by the Company in punishing smuggling with death ; a somewhat characteristic proceeding in law-givers who were traders and monopolists as well as rulers. In the West Indies, the policy of the Dutch was not quite so bad ; but they have the vile distinction of having always been the most cruel of masters in the treatment of their unhappy slaves ;

\* Lib. i. cap. 35.

and their continental possessions, as a just retribution of their wickedness, have more than once been exposed to imminent hazard of being overrun by the Maroons, the revolted negroes, who have, in consequence of ill-treatment, established themselves, for near a century, in the forests of Surinam.

It is, however, in vain to represent the impolitic and harsh Colonial administration of the Dutch as the result of the Republican constitution. Bad as is that administration, there have been far worse. Portugal never was famous for well treating either her Asiatic or her American subjects; and the cruelties of the Spaniards towards the Indians much exceed anything that has ever been laid to the charge of the Hollanders. The whole Colonial administration of Spain, indeed, has been in all ages the model of impolitic and tyrannical government.

Upon the whole, it seems reasonable to conclude, that there is nothing in the Democratic Polity peculiarly incompatible with the wise and humane management of Colonial affairs, beyond the tendency which great bodies of men have to confine their attention and their cares within the bounds of their own immediate interests, and the disposition which those who represent the people in a government have to consult the views and humour the wishes, rather of those to whom they are accountable, than of those with whom they hold no specific relation.

## CHAPTER XVIII.

## NATURE AND ORIGIN OF MIXED GOVERNMENT.

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Connexion—Checks imperfect in a Democracy—In an Aristocracy—In a Monarchy—All Make-shifts, and Why—Illustrations from Action of two Legislative Bodies—From Measures of English Parliament in 1834—Definition of Mixed Government—Illustrations: Poland; Hungary; Sparta; Carthage; Rome—Modern Mixed Monarchies—Opinion of Tacitus; Cicero—Essential Qualities of Mixed Government—British and French Constitutions—Illustrations—Origin of Mixed Governments—Of the Spartan; Roman; Venetian; Genoese; Dutch; French; Scandinavian; British.

IN examining the checks and regulations provided for tempering the force of popular power in Democratic governments we found that there was a serious defect in the operation of those which owed their origin to the people themselves, because, being under their control, the efficacy of the countervailing principle was unavoidably precarious. In like manner, we found that when the method of securing full discussion of public measures consisted in having two or more bodies which are required to concur before they can be adopted, if these several bodies are of the same kind, owing their origin to the same class of the people, composed of the same description of citizens, and holding their appointments for the same period of time, the security for mature deliberation is much more feeble than if those bodies were differently constructed and appointed. Now in every pure Democracy this defect must needs impede the operation of all checks upon the popular will. So in every pure Aristocracy the checks must be formed out of the Patrician body, and there can be no power to balance that body effectually, although contrivances may give the benefit of delay, and so prevent rash counsels from doing irreparable mischief. So, lastly, in every pure Monarchy, all the balances being under the sovereign's control, no very effectual check can be provided upon rash or upon oppressive proceedings of the monarch.

It thus appears that all pure forms of government are liable

to this serious objection. As long as men are clothed with human infirmities, they in whose hands power is placed will be prone to abuse it; and if the power has some unavoidable restraints and limits, their effort will be to shake off the restraints and pass the limits as much as they can. The people in a pure Democracy will be disposed to carry all before them, yielding to the voice of the greater number, who may often be the most unsafe guides. The patrician body in a pure Aristocracy will be disposed to domineer over the people, and by degrees to confine their government to a few of their own body. The Sovereign in a Pure Monarchy will be disposed to trample upon the natural rights of the community, and to disregard the interests of the many, in favour of his own or his family's advantage. All the contrivances which are resorted to in each of these governments, in order to mitigate the violence of the ruling power, though very useful, indeed necessary, in order to make the system continue existing and working, are nevertheless very far from sufficient to produce the desired effect of tempering and regulating the action of the system. All of them are makeshifts rather than perfect. All of them have the radical defect of deriving their origin from the supreme governing power which they are designed to curb, or at least to mitigate in its operation, and of depending for their continuance upon the will and pleasure of that power.

This necessary defect in all the balances, and checks, and regulations which can be devised for a pure form of polity, is the true origin of Mixed government. Let us take one instance to illustrate this position practically. The device of requiring two legislative bodies to concur in making any law is efficacious in proportion to the diversity between those bodies. If both proceed from the people whose power and will the double consent is intended to temper or control, this never can be effected completely, however different the constitution of the two may be. But if one body derives its existence from the people, being a portion or a representative of the people, and the other is neither appointed by the people, nor accountable to the people, but formed of a class wholly removed beyond the popular control, a very effectual check will be afforded; and, besides, what is of infinite moment, every measure will be thoroughly discussed before it can be adopted.

A variety of examples may easily be given of the practical benefits which result from such a diversity. I well remember a remarkable one in the year 1834. The popular party, having also the government on its side, was more powerful in the English House of Commons than it ever had been before, or is ever likely again to be, because the Reform recently effected in the representation had given a prodigious majority at the general election to the party of our administration who had effected the great change. As might be expected, this popular majority in Parliament, backed by the people out of doors, were disposed to carry things with a very high hand. Two bills were sent up from the House of Commons to the Lords, both manifestly passed without due deliberation. By one it was provided that a single vote in any future House, however constituted, elected under whatever temporary influence of the Patrician or Monarchical party of the Constitution, or a vote taken by surprise even in a House differently constituted, might have disfranchised any of the great boroughs recently allowed to choose representatives. For only a single House of Commons' vote of Guilty was required on a charge of general corruption, and then the Lords were not very likely to prevent the borough's disfranchisement. As soon as I saw what had been done, I appealed to the leaders of the opposition, then so powerful in our House, and I found the Duke of Wellington, Lord Ellenborough, and others fully prepared to stop with me a bill of such frightful tendency, whatever might be the leaning of their own inclinations. The Duke proposed a plan of a kind most admirably adapted to form a substitute for this most crude and reprehensible scheme; he asked my help in digesting it fully; together we framed amendments on the Bill sent up; or rather we framed a wholly new Bill; we had it fully discussed in a select Committee; we obtained the unanimous assent of the Lords to it after the Committee had in one or two particulars improved it: and we sent it back thus changed to the Commons. No objection was made to our Bill, except that the changes were too great to be adopted as amendments, and the further consideration of the subject was postponed to another session. But had the Commons been humoured in their scheme, had the Lords been only a second division or section of the Commons, a chamber similarly chosen and similarly responsible, no one now doubts that a law would have been passed shaking to its

very foundations the whole representative constitution of the country.

Immediately after appeared another Bill, hastily and without any dissentient voice passed by the Commons, and which was well calculated to show how likely the former measure was to have been used by that body for the purpose of disfranchising far and wide. Bribery had been practised at a Warwick Election, and the Commons passed a Bill for all but disfranchising that Borough: the adjoining hundreds were to be let in. The case was in the Lords examined as if it had been a cause at *Nisi Prius*; and I sat, with the aid of the Lord Chief Justice and others, exactly as if I had been trying a question between parties in Westminster Hall. We found that all manner of vague and hearsay evidence had been taken in the Committee of the Commons; and that the utmost the Counsel for the Bill contended they had proved in our House, where the rules of evidence were known and enforced, was that about 30 out of 1250 voters had taken bribes. The very Peer who had charge of the Bill candidly admitted that it was preposterous to ask for any measure against the Borough upon a case like this. But the Commons had never paused or doubted, led away by mere clamour.

In the course of the same session—indeed in the same month—came a third Bill from the Commons, containing many important improvements upon the law respecting prosecutions; but containing likewise, from an oversight, an enactment which would have suspended the whole criminal jurisdiction from the first of August next ensuing, rendering illegal the proceedings of all the Sessions in the country. The moment I saw this clause in the Bill I of course struck it out, as was my duty, and the Bill went back to the Commons in an unexceptionable shape. The pride of the popular body was offended, and the Bill was thrown out, merely because it was made possible to pass it without overthrowing the whole criminal jurisdiction in the kingdom. The country thus lost the benefit for a whole year of a very useful act; but it escaped, and escaped through the House of Lords, a measure the most absurd, and which would have proved the most calamitous that had ever been adopted touching the law of the land.

Now in all these cases, and their number might be multiplied indefinitely, the safety of the country depended entirely upon



the Lords being a perfectly different body from the Commons. Had the two Houses been similarly constructed, and similarly accountable, the only effect of a second discussion would have been a somewhat longer delay in passing the pernicious acts, a delay that would have afforded no kind of security that one chamber would take a different view from the other and correct its gross blunders—any more than a different view had been taken and those blunders corrected in the later stages of the bills while passing through the Lower House.

These facts are of importance in an historical point of view ; but they are here introduced as illustrating very clearly the respective tendencies of Pure and of Mixed government. I do not believe that there was a single member of either House of Parliament who, in 1834, had the least conception that had the constitution of both been the same, each being a purely popular body, those Bills would have received any effectual opposition even in the provisions which were most plainly objectionable, and which ensured their unanimous rejection by all parties in the Upper House. I am equally sure that there was not a member of the House of Commons through which all these provisions had passed without any opposition, who would not have bitterly repented having given his consent if they had unfortunately become Laws. But thus the mischief would have been done. The moment, indeed, that the worst of them began to work, Parliament must have been reassembled, and the Standing Orders suspended in order to repeal it. But beside the disgrace and contempt which this would have brought upon legislation, and which would have operated in future to prevent, or at least to delay, the adoption of many a good and wholesome measure, some of these bad provisions would have remained upon the statute book, and might have come into operation at a time when a sudden repeal could not have been effected. Thus the Disfranchisement Bill might not have been got rid of until some of the largest cities in the kingdom had been deprived of representatives, and a new Reform Bill might hereafter have been wanted to readmit them within the pale of the constitution.

The natural limits of Mixed government have unavoidably been treated of incidentally in the examination of the three simple or pure kinds of polity. It is that constitution into which more than one of the principles enter, and in which the supreme

power is lodged in more than one functionary or body, each being entirely independent of the other, and each being both irremovable by, and unaccountable to, any authority whatever.

Thus if there be a Sovereign and a Patrician body, the government being vested in the hands of both, that is, certain functions requiring their joint consent, or some functions of supreme power being performed by one, and some by the other, the monarchy is Mixed. So it would be even if the Sovereign could admit members of the Patrician body, provided they were for life, or if the Patrician body elected the Sovereign, provided he was irremovable. The Polish government, sometimes called a Republic, sometimes an Elective Monarchy, was of this description; it was, properly speaking, a Mixed Aristocracy, and we have treated of it under that head. The Hungarian government, which we treated under the same division of the subject, is a Mixed Aristocracy, in which the Sovereign is not elective, but hereditary.\* The ancient republic of Sparta was a Mixed Aristocracy, though not of the same kind, for the Sovereign, or rather the two Sovereigns, at Sparta, were hereditary. Carthage appears, like Rome after the first ages of the Commonwealth, to have had a Mixed Aristocracy of a very different kind, or, more properly speaking, a Mixed Democracy; for there was a Patrician body from whom the Senate was chosen, probably by the people, as Aristotle condemns the system for leaning too much to the popular side. The qualification, however, of wealth as well as birth being required both for the *Suffetes*, or chief magistrates, and the Senate, and the general or popular assembly only being appealed to when those differed among themselves, as the whole legislation, and the most important executive functions also, were entrusted to the Senate's hands in the first instance, their power made the constitution a Mixed Aristocracy.

In modern times, however, the most frequent combination has been that of Monarchy, Aristocracy, and Democracy; a kind of union which the ancients appear to have considered impossible, sometimes treating it as the mere romantic speculation of political dreamers. Thus Tacitus, after saying that all nations are either governed by the people, the patricians, or a sovereign, adds that a kind of constitution, formed

\* Part ii. Chap. ix.

out of a choice or combination of these, is more easily praised than realized, and if realized, he says, it never can be of long duration.\* Cicero gives the clearest opinion in its favour, without pronouncing it to be a chimerical scheme: "I hold," he says, "that government to be the best which is composed of the regal, patrician, and popular powers moderately blended together."† It may, however, be admitted that in ancient times, when there was no means of the people exercising their power, or share of the supreme power, without a direct interference in each act of government, that is to say, before the principle of representation was discovered, the difficulty of maintaining a Mixed Government, in which the people should form a portion, must have been all but insurmountable.

1. The foundation of this, as of every other form of Mixed Government, is the absolute independence of each order in the state. If the sovereign, like the Roman consuls and Carthaginian suffetes, held his high office for a limited period only, and were then displaced at the pleasure either of the patricians or the people; if the select or privileged order held its patrician rank at either the sovereign's or the people's pleasure; if either the sovereign or the patricians could interfere with the popular assembly, influence directly the choice of its members, in the case of a representative system, or influence the deliberations of the popular body, representative or other, which exercised the people's part of the administration,—in neither case would the government be Mixed of the three primary kinds, but in the first case it would be either a Mixed Aristocracy, or a Mixed Democracy; in the second case it would be a Mixed Democratic Monarchy, or a Mixed Monarchical Democracy; in the third case it would be either a Mixed Monarchical Aristocracy, or a Mixed Aristocratic Monarchy.

It would not be affirming too much, or refining too much, to regard the British Constitution, before 1832, as rather partaking more of an Aristocratic Monarchy, than the triple combination for which its admirers claimed credit. Neither is it very easy

\* *Cunctas nationes et urbes, populus aut primores aut singuli regunt. Delecta ex his et constituta reipublicæ forma laudari facilius quam evenire; vel si eventus haud diuturnus esse potest.*—Ann., lib. iv.

† *Statuo eas optime constitutam rempublicam quæ ex tribus generibus illis, regali, optimo (quæ optimatum?), et populari, modice confusa.*—De Rep.

to regard the present Constitution of France as having a sufficient aristocratic mixture to deserve that character. The want of influence and wealth in the nobility, and their legislative functions not being hereditary, hardly gives sufficient scope to the aristocratic principle.

2. Not only is it essential to a Mixed Government, that the different estates should be independent of one another, and each be independent of the powers to which the others are accountable ; it is another essential requisite that each should be equally required to concur in every legislative act. If any one, or any two where there are three estates, could make laws to bind the whole ; if the majority of the estate could bind the minority, instead of all being required to concur in every act of legislation, the government would only be Mixed in name. Thus, if in England the King and Lords could legislate to bind the people, the Commons would only have a nominal power. So if the Lords and Commons could bind the Crown, the Sovereign would be only nominal ; and though with us he hardly ever exercises his negative, yet he effectually does the same thing by having the choice of his ministers, the selection of his servants among all those individuals of the people in whom the two Houses will confide, beside having great direct influence over the members of both Houses by his patronage and by his power of creating Peers.

3. The necessity of the several estates being each supreme and independent, and each required to concur in all important proceedings, is confined to acts of the supreme or legislative authority. If the Crown, for example, could interfere in any minor acts of the people or the nobles, as by nominating to certain places connected with popular meetings, the returning officer for instance in elections, or even the presiding officer in the patrician assembly, it would not cease to be, most strictly speaking, a Mixed Monarchy. So, too, the different estates may exercise important functions independent of each other, and so far from the government ceasing to be Mixed, it would be the better as a Mixed Government for the distribution. No one regards the executive functions of the sovereign as any deviation from the Mixed Polity, although neither the nobles nor the people can directly interfere with them. Our monarchy and that of

the French is all the better as a Mixed Monarchy, because neither peers nor deputies can ever interfere with the command of the army, or the appointment of ambassadors or of judges; and because the peers can only exercise judicial authority, and the commons or deputies can only impeach and not try public delinquents.

4. But in all these instances of separate powers being lodged in the several estates or orders, it is the nature of the Mixed polity, and flows directly from the combined operation of the parts, that one should in extreme cases act upon the other, even so as to impose a restraint upon each other in the exercise of their separate and independent functions. Thus, although the sovereign alone can appoint the judges, the ministers, the commanders of the forces, either House may censure a bad appointment; both together may cause the removal of a bad judge; and, one accusing, the other may try and convict a bad minister or commander. In all these cases the strict constitutional law requires that the three estates should concur; because, unless the crown chooses to make the removal of a judge, it does not follow from the joint address of the Houses against him, the statute only empowering, and not requiring, that removal upon such an address. So, though a pardon cannot be (by statute) pleaded in bar of an impeachment by the Commons, the crown must agree not to pardon before the sentence—the joint sentence—of the two Houses can be carried into effect. As for the censure on a minister, or address of one or both Houses to remove him, strictly speaking the crown is not bound by it. But in all such cases the great power possessed by the Houses, especially by the Commons, renders the crown's yielding to their desire a matter of course. Indeed, if only the Commons take their line, and the Lords join with the Sovereign against them, an appeal to the people by a dissolution is the resource of the Constitution, and if this ends in the return of a parliament similarly resolved, the Crown and the Peers, almost always, must submit. However, in all the ordinary cases, this mutual interference of the estates with each other's separate and independent functions is not the course of the constitution. It is a power always existing, but rarely acting; it is there, but is only called into exercise when an occasion arises that requires it,—

an occasion that renders a check or balance necessary to regulate the movements of the whole machine, and prevent the excessive force of any one power from deranging or destroying it. They are like the more ingenious and refined contrivances of mechanical skill, which being only designed to prevent mischief and restore equilibrium, are quiescent until the occasion arises when their action is required, and having discharged their appointed duty, become again inactive when the remedial operation has been performed.

The origin of the simple forms of government we have found always to be lost in obscurity, because those constitutions have been first established in the earliest ages. The Mixed governments have seldom been the earliest under which men lived, and we can therefore more frequently trace their origin. They have sometimes arisen from acts of violence committed by one power in the state encroaching upon all others in a manner not to be borne, and thus rousing a resistance which either entirely changed the political system or introduced into it some checks calculated to prevent a repetition of the wrongs that had been suffered. But the more frequent origin of Mixed government has been the gradual rise of one branch of the community into an importance that did not originally belong to it, and its consequently obtaining a share of the supreme power. As the anxiety to obtain this on the one part before the influence which engendered it was completely established, would make the order rising into importance satisfied with a portion of the supreme power, and as those in possession would generally be disposed to yield a portion of the governing power, rather than risk the loss of the whole, a combined government would thus naturally arise in the State, and continue for a greater or less time to maintain itself, according as the shares of power given to the parties were well or ill adjusted, and the joint action was well or ill adapted to the circumstances of the community. Sometimes attempts would be made by one party to regain the exclusive influence which it had lost; sometimes the other party would seek to extend its power and govern exclusively in its turn. If the machine were ill adjusted, new changes might take place, with more or less violence, to produce a better adaptation of its different parts to each other's action, and of the whole move-

ment to the situation of the country; and in examples of all these changes, by sudden revolution or by gradual accommodation, or by both acting at different times in the same system, the history of mixed governments in both ancient and modern times abounds.

The Spartan constitution could hardly be called mixed. To the anarchy of the disjointed government under the two kings prior to Lycurgus, succeeded a constitution by him modelled on that of Crete, and which was nearly a pure Aristocracy. It was not till above a century after his decease that the Ephoral power became any protection to the people; and in a very short time the Ephori became altogether identified with the Aristocratic body, so as to eradicate whatever mixture of Democracy had for some years been introduced.\*

The Roman government under the kings appears to have been a Mixed Monarchy or Aristocracy, in which the patrician body was gradually overpowered by the king. When, with the aid of the people, it had effected a revolution, expelling the kings, the Aristocracy gained an uncontrolled ascendancy, and became pure. The popular power increasing with the numbers and the wealth of the people, gradually undermined the Aristocracy, and established for some time a Democratic Commonwealth. But the patricians soon regained a portion of their influence, and the government was a Mixed Aristocracy until the tyranny of the patricians, the corruption of the plebeians, and the conflicts of factions after a scene of unparalleled violence and cruelty, prepared the way for a pure and absolute despotism.†

It would be a great abuse of terms to call the Venetian a Mixed Aristocracy, because of the Doge being appointed for life; for he had no real share in the legislative power or the important administrative functions. That singular government continued for six centuries in the form into which it was finally moulded. But at a much earlier period there was a Mixed government established at Venice, in consequence of the ruinous contests carried on by the different islets of which the state was composed,—contests which threatened the entire conquest of the whole by the Slavonians and the Lombards, the

\* Part ii. Chap. xv.

† Part ii. Chaps. xi. xii. xiii.

latter attacking by land, the former by sea. Under the pressure of this exigency an executive officer, the Doge or Duke, was introduced into the system, and with great administrative power and extensive patronage; but as the general or popular assembly retained the legislative power in its hands beside electing the Doge, the government might now be regarded as Mixed. The increased power of the Doge, from foreign conquest, occasioned frequent struggles between that magistrate and the people, at whose head the nobles placed themselves. But, generally speaking, the Doge prevailed, because no permanent measure was adopted to restrain his power, although the struggles of the parties frequently led to his violent death. After the lapse of nearly two centuries and a half (1030) a check was at length contrived, and the government became more really Mixed than it ever had been, in consequence of a body being created whose concurrence with the chief magistrate was required to legalize his acts. For about a century and a half the government continued to be really of a Mixed form, when the Aristocracy was established, which continued for six centuries without any change to rule the Republic.

In Genoa the Aristocracy was not so long established, nor so uninterrupted in its continuance. But nothing like a Mixed Government was ever established. There were frequent alternations of aristocratic or oligarchical tyranny and mob government, each faction wreaking its vengeance on its adversaries when it obtained the advantage. But for the most part the people were subjected, and the patricians ruled the state.\*

Of the other Italian Commonwealths the history has been generally alike; first a pure Aristocracy; then a mixture of Democratic influence as the people's wealth increased; then for a while a subjugation of the patricians to the burghers; followed by an entirely Aristocratic constitution, which ended in purely Monarchical Government.†

The United Provinces have undergone several revolutions, but the most important change was that which gradually took place in the beginning of the seventeenth century, and converted a Democratic Government, slightly mingled with Monarchical

\* Part II. Chap. xxiv.

† Part II. Chaps. xxv. xxvi. xxvii.



institutions, into a Burgher Aristocracy. The House of Nassau has more than once been reduced for several years to a state of nullity in the government; but the favour of that illustrious family with the people has always been sufficient in the long-run to retain its power, and keep the government Mixed. William III. was enabled, by his great success in establishing our free government and obtaining the crown of this kingdom, to place the Mixed Constitution of his own country upon a more stable foundation; and since that period it has, with little interruption, formed a monarchy, really of a Mixed kind, and, since the overthrow of the French power, a Mixed or Limited Monarchy in name as well as in substance.

The government of France was never really of a Mixed kind till the results of the Revolution in 1789 established a Limited Monarchy, which the Republic displaced, but which was afterwards restored on Napoleon's downfall. The powers of the States-General and Parliaments were too ill defined to constitute a Mixed Monarchy before the reign of Louis XIII.—In Arragon the Cortes was of sufficient weight to constitute a Mixed Monarchy, from the expulsion of the Moors to the reign of Charles V.\*—Perhaps we may give the same name to the government of Sicily.† But a really Mixed or Limited Monarchy in both Spain and Portugal has arisen out of the changes brought about by the French Revolution, and the wars which it occasioned.

We have seen, in the history of the Scandinavian governments,‡ that the tyranny of the sovereign was succeeded by a more intolerable tyranny of the nobles, which made the constitution both of Sweden and Denmark only Mixed Monarchy in name, the sovereign's share of the supreme power being exceedingly inconsiderable, and the people's still more trifling, until, by revolutionary movements, Denmark in 1661, and Sweden in 1772, but more effectually in 1789, became subject to absolute Monarchy.

The history of our own admirable Constitution will furnish many important illustrations of the steps by which a government becomes Mixed, or rather by which, from being composed of

\* Part i. Chap. xix.

† Part i. Chap. xvii.

‡ Part i. Chap. xxi.

two, it becomes composed of the three powers. The Feudal Monarchy at first was more aristocratic than it afterwards became upon the conquest from the powerful operation of the Imperfect Federal Union. In the course of two centuries a beginning was made of introducing the popular power into the system; but it was not till the end of the fourteenth century that this change had been completely effected, and that the Mixed Monarchy can be said to have been fully established as we now find and now enjoy it.

## CHAPTER XIX.

## VIRTUES AND VICES OF MIXED GOVERNMENT.

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Defects of checks in all pure Governments—Illustrations; Athens; Rome; Eastern Despotisms—Mixed Governments the only effectual check—Virtues of Mixed Government—Its checks and balances perfect—Secure full discussion—Protect Rights and Liberties—Maintain the Stability of the System—Alleged vices of Mixed Government.

THE advantages of Mixed Government flow naturally from the imperfections that are always to be found even in the most finished form of pure government. We have thus been led incidentally to note many circumstances belonging to this branch of our subject; because, as often as we have considered the inconvenience of the pure form, and shown how it was necessary to temper its principles, we have found that there was a radical defect in all the contrivances which could be resorted to for that purpose, and that nothing but a departure from the strict and rigorous system could provide checks and balances which would prove effectual. Now that departure was in truth the introduction of some other principle, or the mixture of some other form with the form under consideration.

The reason why these checks were not wholly to be relied on is plain. If the government must be kept in its perfect purity, all the checks must more or less partake of its fundamental principle; consequently, all of them must be liable to the same objection, and require modification or aid to reinforce them. But that could not be given without the introduction of something belonging to another form of government, some principle alien to the genius and spirit of the constitution in question. Thus, to take the example which we resorted to in the last chapter; if it is desired to check the rash and erroneous acts of a purely popular legislation, the utmost that we can do by means

of devices not inconsistent with the purely democratic principle, is to frame rules of proceeding which occasion delay and give time for deliberation. But the same power which formed these rules may abrogate or suspend them ; and the occasions on which they are most likely to be dispensed with are precisely those when excited passions render their controlling operation the most necessary to prevent mischief. If the House of Commons, or Chamber of Deputies, were only restrained by their Standing Orders, how often would these be suspended when they stood between those Assemblies and the object of their eager desire ? So if another Chamber, or another House, were added to those several bodies, and its assent also were required to the measure, the same eager desire to pass it would operate in that second body, if its constitution were as popular as the structure of the former. Nothing but another origin, or other duration, or other materials, can secure the checks required upon the first body's proceedings, and this is making the Government Mixed. If the only difference were, as in America, a higher qualification in the members, or a longer duration of their commission, unless they held their places for life, no effectual check would be obtained from them ; and even that would be of very inferior efficacy to the restraint imposed by a totally different order of men, as a hereditary privileged class, or an executive magistrate holding his office by inheritance or chosen for life.

Thus it was clear, when we examined the checks provided by the Athenian constitution, that they were with difficulty discernible ; that they were very important, compared with an absolute Democracy, which, without any such contrivances, could hardly continue its existence ; but that they were so precarious as to be in the hands of the sovereign people, at whose mercy, after all, the government necessarily was ; and, accordingly, many acts of gross injustice to individuals, and of most fatal rashness to the state, were very frequently done, notwithstanding all the checks which we had occasion to describe (Part II. Chap. II., Part III. Chap. XIII.). To take but one instance in order to satisfy ourselves how exceedingly precarious all such checks were. The rule was, not to let any one, under pain of death, propose the repeal of certain fundamental laws. But when any repeal became popular, the orator appeared with a halter about his neck in the general assembly and made the proposition with the applause of

the meeting ; thus at once testifying to the existence of the law, to his sense of its stern rigour, and to his confidence in its utter inefficiency. So at Rome, an Augur, one of a numerous college, could any day, by pronouncing the solemn word "*alium*" (that is, "*ad alium diem*"), cause the postponement of a question in which the people took the greatest interest. Yet who can doubt that the multitude had power to deter such priests on many an occasion which demanded their interposition all the more that the vehemence of the popular feeling was the stronger and more overpowering ? So a slight check is provided to the caprices and cruelty of an Eastern despot, by the delegation of his powers in order to their being effectually administered, as well as by the chances of popular violence. Yet that very decision and delegation strengthens the tyrant's hands ; he often uses it to domineer with the more searching violence ; and his fear of resistance constantly produces acts of needless cruelty, in order to extinguish by terror all the sparks that might kindle into a flame.

We thus perceive that the only effectual checks and balances in any system of polity are those which depend upon the introduction of different kinds of power. The separate and independent existence of different estates or authorities, each required to concur in all acts, each free to act as it pleases, and as its separate interests prompt, each armed with some independent power of resistance to the others, is the only effectual method of preventing one body in the government, or one class of the community, from ruling uncontrolled, subjecting all the rest, and mismanaging the public affairs.

All the advantages, then, which have in any part of this work been shown to arise from checks and balances in the system of government, are peculiarly the produce of that combination of different powers and principles in which a Mixed government consists ; and it becomes unnecessary to discuss these minutely here, after the consideration which has already been repeatedly bestowed upon them. But it may be well to state that the three great advantages which a Mixed government possesses over every other, are its protecting the public interest from the risk of rash, ill-concerted councils, its securing the freedom and the rights of all classes in the community, and its maintaining the stability of the political system.

1. The prevention of rash councils is most surely obtained

from the conflict, or rather the mutual counter-action, of different independent powers in one system. If one party is to detail, however ably, however fairly, before a judge the whole merits of any case, unopposed, we know full well how many views of the subject, how many arguments, and how many facts, will escape his best attention. But if two, less able, incomparably less candid, appear before the judge, nay each as unfair and as violent in his statements as possible, their contention will leave no point unsifted, and the whole matter will soon be ripe for safe decision. In the former instance, the judge will hesitate and pause, fear to go wrong, falter in doing right; and after his utmost care he will never be quite sure that he has avoided error. In the latter instance he will have no anxiety at all, unless the facts are necessarily obscure, and the principles ill ascertained by the law, and he will generally give a speedy, a complete, and a correct decision. In like manner no better safeguard can be devised against an unreflecting course of proceeding than the consecutive discussion of each measure by bodies which have different, often conflicting, interests, and which will unavoidably take very different views of the same question. Haste, rashness, is with certainty thus excluded; error, misdecision, becomes exceedingly unlikely.

2. The effect of Mixed government in protecting the rights and liberties of all classes is equally striking, and if possible more important. In truth there can be no other safe and secure protection for the whole community. If the Sovereign is absolute, there is no resource but resistance; and long before public wrongs have ripened into the general desire of redress which makes resistance safe or even justifiable, extreme oppression may have been exercised and great hardships endured. An Aristocracy is not so fatal to liberty or so fruitful of wrong in one respect, that the mutual jealousy of the patricians and the parties which are the natural produce of this soil afford some protection to the people at large. But we have seen how oppressive the government of a select body may be in other respects; how it may even be worse to bear than the absolute dominion of one (Part II. Chap. VI.). In a Democracy, there is no security for the party whose rights are grudged and whose influence is dreaded by the ruling power; the tyranny and intolerance of the majority has been already fully described, and

it has been found perhaps the worst of all (Part III. Chap. xv.). All the checks provided in any one of these three, constituted out of its own materials alone, are unavailing to make every one's rights secure, and to provide for each class a safeguard against the too great power of the preponderating party. But when there are opposing or conflicting interests, no one body in the state can set the law at defiance with so great facility as when all power is centered in one description of the community. A natural jealousy arises of each other when the supreme power is lodged not in one but in several estates or orders; and hence not only does it become difficult for one of these to encroach upon the rights of the other, but neither is likely to permit such an encroachment upon a third party,—such as a third estate where there are three, or a portion of either where there are two. If an Aristocracy were disposed to maltreat a portion of the patrician body in a government composed of two branches, the representatives of the people being one, the latter would assuredly take the part of the oppressed class of patricians. So the sovereign, in a state where there was only a popular body besides, would not suffer a measure to pass which should be levelled at the just rights of any part of the people. But the most perfect Mixed government is that which consists of a body representing each class,—the people by their own deputies, the men of rank and wealth by the aristocratic chamber, and the executive departments of the State, military and civil, by the sovereign. Let any subject be aggrieved by the popular deputies, the aristocratic body or the Crown will seek to have him righted. Let any executive officer be aggrieved by the patrician body, the popular assembly will join the Crown in obtaining redress for him. Let any just privilege of rank and station be invaded by the Crown, the people's deputies will join the Aristocratic body in defending it; and if the nobles were to be oppressed by the people, they would find a resource in the sovereign against this oppression.

3. The stability of the Mixed system of polity is evidently in much less hazard from internal commotion than that of any pure government whatever. Everything which tends to secure men's rights and prevent injustice is a guarantee of internal peace, because it removes the most powerful cause of violent change—unredressed grievances. Moreover, when each class

of the community is represented effectually in the legislature of a country, a safety-valve, as it were, is provided, by which any dangerous spirit of discontent may escape. A popular representation alone is indeed an excellent contrivance for this purpose; but there may be no representation of the minority; or some classes, as men of rank and wealth, may be imperfectly represented, and at any rate the majority of a single body is supreme. When a second body is provided, independent of the popular deputies, the chances of serious discontents are diminished, in proportion as all whom the latter discontent and vex find their protectors without the necessity of recourse to any violent measures. Besides, when all the stability of any government depends upon the security of a single power in the state, the system rests upon a much narrower basis than when several bodies share the supreme power. The popular deputies form no doubt the most secure, because the broadest foundation for the government; but suppose a powerful faction, discontented with the proceedings, and impatient of the oppressions of that popular body, should intrigue with a foreign power, or with a successful commander favoured by this dissatisfied minority, how much less securely would such a system be enabled to meet the peril, than if there were an aristocratic body to resist these consequences of the popular domination, if it had failed to prevent that oppression itself! That the existence of three branches affords a still safer refuge from the violence which would overthrow one is equally obvious. In fact, the great hazard of all revolutionary movements is the operation of some sudden and violent impulse. The action of three co-ordinate bodies, beside removing the temptation from all classes to act against the established government, resists the change when it is attempted, and gives time for the machine to right from the shock.

The vices of the system, which has so many and such precious virtues, lie within a narrow compass indeed. It may be charged with a tendency to multiply parties, by giving to every class of men a protection, and thus showing that each faction may make itself powerful in the administration of affairs. But experience has shown the tendency of parties to multiply in both aristocratic and popular governments of a pure form. We may be told that the establishment of more orders than one tends to impair



the vigour of the administration. But when against this is set the evil of rashness, to which the most pure and vigorous government must needs be exposed, because of there being no check upon its movements, a sufficient reason is given for preferring that safety, which in the long run will even prove an increase of all useful vigour. We prefer the engine which in twenty-four years cannot run the hazard of exploding, to that which, working much more rapidly, may be blown up in twenty-four hours.—If it be said, and this is the common ground of complaint, that the people's interest requires an unobstructed progress, which the counterpoise of a sovereign or of a privileged class impedes, and that the good of the many is thus sacrificed to the benefit or to the prejudices of one or of a few—the answer is, that, without denying the possible occurrence of cases in which this high price may be paid for the benefits of a Mixed Constitution, yet those constantly enjoyed benefits, of equal rights, good government, and security against wide spreading revolution, are well purchased by the payment of that occasional price. It may be added, that the virtues or vices of any government are to be estimated, not by taking an account of its working for a few years, but on the long run, and that the security of this Mixed System in the long run will conduce more to the progress of the people's interests, than a removal of all the obstruction which the checks and balances can create.

## CHAPTER XX.

## ULTIMATE TENDENCY OF MIXED GOVERNMENT.

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Ultimate destiny of all Governments the same—Universal progress towards Popular Power—General Improvement in Men's Condition and Habits—African Despotisms—Oriental—Connexion between Improvement and Change—Mitigation of Absolute Governments; East; Prussia; Russia—Effects of Revolution on Despotisms—General interest in extension of popular Rights—Popular Improvement makes Checks less necessary—Illustrations from English History—People's Rights derived from their Power—Advance of Power with Improvement—Prophetic view of an improved Age—Upper Classes and Property safe—Representation safe—Religion safe—Double Legislation safe—Hereditary Executive less certain to be maintained.

It is now fit that we consider the tendency of all Mixed Government, with a view to ascertain whether there be any qualities inherent in its nature which tend to prevent change from ever taking place in its structure, or whether its composition is only such as to ward off that change, and preserve longer than any other form of government is likely to preserve its unaltered existence. We have observed the reasons which give Mixed Governments a much better chance of escaping violent convulsion, and the revolutions that such accidents occasion. But it does not follow that there may not be a gradual progress towards change which cannot be prevented. Everything in this discussion must depend upon the materials of which the Mixed Government is composed, so far as regards the first change; but we shall presently find, that ultimately the same alteration is likely to be undergone by all governments, and that in the end all will probably reach the same goal, although they may have started from points at very different distances from it, and gain it by very different routes.

The inevitable tendency of every political system must be towards giving an increased power to the bulk of the people. So long as the human race is by nature fitted for improvement, no political circumstances can wholly prevent men from making some progress in bettering their condition and in extending

their knowledge. In some of the degrading and always sanguinary despotisms of savage countries, the motion of society may be so slow as hardly to be perceptible. We have accounts from travellers of nations in the interior of Africa, subject to tyrants whose whole existence seems to be a series of bloody murders. Nevertheless it cannot be denied, that this dreadful state of things has been in great part produced by the execrable slave traffic, which civilized and Christian men for so many ages have driven upon the coasts of that vast and benighted continent. If the same habits of mutual depredation, and of spilling each other's blood, which now make part of their existence, had distinguished those barbarous tribes a thousand years ago, the race must by this time have been extinguished. When the Slave Trade shall cease, we have reason to believe that even over the African desert the light of religion and of science will at length dawn, and the only exception be removed to the general rule, that human society is everywhere proceeding with a motion more or less rapid towards general improvement.

In the East, where the systems of polity are civilized, though the nature of the government is such as to keep the people in great ignorance, a perceptible progress is making. The trade of the active and industrious Europeans can nowhere be entirely excluded; intercourse with foreigners is necessarily maintained; and even in China itself, hitherto the most unchanged of all empires, the communication of more light seems finally to have become inevitable from the events of late years.

It is quite impossible that in any government, however despotically framed, the sciences, the arts, the learning, the moral and political knowledge of the people should increase, and with these their comforts, their possessions, and their enjoyments, without the wish being communicated to them of bettering their condition politically; for they must, independent of all the natural desire which men have for power and distinction, learn that they suffer many unnecessary risks, are exposed to many losses, and encounter many obstructions and inconveniences in their pursuits, from which they would be protected were the frame of the government varied under which they live. To imagine that if Turkey were completely civilized, and men possessed both the wealth and the knowledge that bless Western

Europe even under its most absolute monarchies, a bashaw could be sent into any province to enrich himself by plunder and confiscation, securing impunity by suffering the common master to pillage him in his turn, is wholly absurd. The two things could not co-exist in the same system; the outrage never would be attempted, or, if attempted, would not be endured. It is not going too far to affirm that the sultan, it is certain that the bashaw of Egypt, rules by himself and his officers very differently from the Tamerlanes and the Bajazets of a former age. Compare the mild and enlightened reign of the present Prussian sovereign with that of his predecessors a century ago, and you will be satisfied that, however little the form of that great military monarchy may have been changed, no prince royal could now be called forth to see his favourite strangled before his window for the gratification of a tyrannical father's splenetic humour. No Baron Trenck could be immured in a dungeon for twenty years to expiate the misfortune of having found favour in the eyes of a princess. Russia is as despotically governed as any European prince could now venture to rule his people; yet there is no possibility of a czar beheading his mutinous guards with his own hand, or of a prime minister being sent in the night to Siberia, with his family, because a new cabinet had been called into office.

The first step in the general and inevitable change has been made in all these countries. The government generally remains the same, but the exercise of absolute power is tempered and restrained by the improved spirit of the age, by the force of public opinion abroad as well as at home, and, above all, by the great improvement in the knowledge, manners, and character of the people over whom those governments are established.

But this improvement cannot continue, much less can it go on advancing, without bringing home to every man's mind the sense of what is left unaccomplished; the great want of security for the continuance of what has been gained; the abundant field which there is for acquiring much more. All men's wishes, therefore, are unavoidably pointed towards one object—the obtaining a legal right to that relaxation of absolute power which they always have gotten, but only as it were by a kind of happy accident, in part owing to the personal character of the sovereigns themselves. Let it be added, that these sove-

reigns, partially in advancement of their age, must generally find it their interest to give more, and to secure the people by better institutions, because this is in truth securing themselves. Nothing is less stable than despotic power; of this we have repeatedly seen proofs in the First Part of the present work. The convulsions to which despotisms are subject do not often change the government; but they change the person, the family, the dynasty, and that is as bad for the individual rulers as any revolution. Besides, all princes have now learnt that, some portion of popular rights being conceded, the increase of public wealth irresistibly follows, and that no country can be made available to the financial supply of its governors without the form of a popular constitution.

This is the next step in the political progress of all countries, even of those subject to the sway of absolute princes. But of course these monarchs, who might be willing enough to allow certain improvements in the institutions of their country, would be desirous to keep the government of the Mixed form, which secures to themselves an ample power, only so far mitigated in its exercise by the grant of popular rights as to augment their security and financial resources. They would strive, therefore, to secure the government from any further change; and the aristocracy, their ally generally in this conservative plan, would join in seeking to prevent any new acquisition of the people. The nature of Mixed Government, as we have seen (Chap. xix.), is well calculated to further this design; and no doubt such a government tends longer than any other, in all ordinary circumstances, to preserve itself without material change, in consequence of its different branches pulling different ways, and resisting any usurpation of either one or the other, or even of any combination between two. The general good, too, as well as the interest and the pleasure of the sovereign and his patrician allies, requires, as society is at present constituted, this permanent stability of the Mixed Government. We have seen how absolutely necessary it is that checks and balances should be provided to regulate the movements of popular government; how fatal the mischief would be of the people ruling uncontrolled.

But the whole reasoning which proved the necessity of such contrivances, the whole foundation of the preference given to

Mixed Government by the result of our inquiries, consisted of one position—the incapacity of the people to govern themselves. Remove this incapacity, and that reasoning fails, that reasoning no longer can sustain the conclusion to which it conducted us. The whole question, therefore, is whether or not the people are ever likely to improve themselves so much as to be quite capable of self-government. Until that happy time arrives, their best interests, their only safety, are bound up with a government judiciously mixed, one in which, as Cicero says, the simple elements of political power are wisely and moderately blended. When men have become so conversant with state affairs, not the niceties and details, but the general principles of national polity, so familiar with those things which constitute their own true interests, so intimately persuaded that their concerns, to be managed profitably for themselves, require to be conducted deliberately, calmly, honestly—no one can doubt that the conflicting and counteracting powers of a Mixed Government are no longer necessary; and that the infant people, become of full age, and perfect stature, and matured faculties, may safely, nay, advantageously, be entrusted with the management of the people's own concerns. But it cannot be doubted, that when this state of things exists, and the people have become well qualified to govern the state, without any more control than they feel it for their own interest and their own convenience that they should have, they will obtain this full power. There is no authority in any state which is always on the increase except that of the people. They alone are constantly multiplying in their numbers; they alone are always increasing their wealth: they may not become more learned and more sagacious than the upper classes, but they are always improving their intellectual resources, always coming nearer and nearer to the best informed of their superiors in station. The indefinite increase of their accomplishments tends to lessen the distance between them and the wealthy few; tends not only to lessen the veneration with which the rude regard the refined, but to lessen the regret at being less wealthy, and to diminish in their eyes the importance of their physical privations. Hence an indomitable spirit of self-possession and independence, a habit of estimating men's

worth according to their real and not their factitious superiority, a disposition to regard with respect only those qualities which the humblest may possess, and those acquirements which all may make. When such a state of things shall exist in any country, it is clear that the preponderance of the people must become far too great for all the rest of the community combined.

In order to try these positions, let us revert to the state of this country before the towns were admitted to send representatives to Parliament. They were summoned, without any doubt, for the purpose of making their wealth liable to contributions for the King's service. But if no such motive had led to their admission, a share of the government they must needs have obtained, either by fair means or by foul, in the course of half a century, devoted to the further improvement of their knowledge and their wealth. Who can suppose it possible that the whole government should have remained in the hands of the Sovereign and some forty or fifty barons with half as many prelates, if the number of the people had been increased to so many millions as we now reckon, and their information upon all subjects had been improved as we are supposing it to be in the case which has been put? Then the changes which have of late been effected in the Representation, and which have so greatly augmented the people's influence, were entirely caused by the growth of the popular numbers, and resources, and information. Those changes might have been postponed a few years, perhaps half a century longer; but they were altogether, and they were unquestionably owing to the increase and the improvement of the people.

The people, then, originally as entirely excluded from all share in the legislature as they now are in Russia, or as they still are from all direct share in the executive government, have, by dint of their augmented power, obtained a large, perhaps an undue proportion of the legislative power. It is manifest that their further increase in numbers, wealth, and knowledge, must go on, and at an accelerated pace, while neither of the other orders of the state can improve their position in any material degree. It seems to follow, that the people will thus in time gain a material accession to the large share of power which they at present possess. If not, there can no reason be assigned for their ever having gained so much; they have only attained their

present political position, their position in point of right, by such an increase of actual power, of power in point of fact, as we are supposing, to go on still further augmenting.

It is however possible, and this is carefully to be considered, that this increase of real power may outstrip the improvement of the people, and anticipate the period when sufficient capacity of self-government would make it quite safe to trust them with the full management of their affairs. There could not be a greater evil, above all to themselves. That change which, gradually brought about, with full preparation and only effected when they were fit for it, would be safe and productive of neither shock nor fear, would prove utterly destructive of the best interests of society if suddenly wrought by violent means, through the impatience, the ignorance, or the profligacy of the people and their advisers. Against so disastrous a consummation it becomes the bounden duty of every well-wisher to his country, and, above all, every friend of the people themselves, earnestly to struggle, by all the means of reason and instruction, by all means of administrative vigour, nay of open and steady resistance, if the resources of argument and information should be exhausted in vain.

The reader of this chapter is, however, referred back to the Preliminary Discourse, and to the Second Chapter of the First Part, for a full explanation of the sense in which we are here taking popular Education and improvement, and for a statement of their probable effects in rendering safe the political change which, it is not doubtful, they are calculated to produce. He would commit a very great mistake who should imagine that we can easily picture to ourselves the feelings, the conduct, and, generally, the condition of the people, when enlightened by study and reflection, from anything that we now see around us. He would be equally led astray by his present impressions who should feel any great alarm at the prospect of more extended influence being communicated to a people well prepared for self-government, those impressions being derived from the present conduct of men half aware of their duties, and almost entirely ignorant of their true interests, men, perhaps, under the guidance of a few unprincipled leaders, in whose hands they are tools of mischief, unaccustomed, and indeed unable, to form their own opinions, or act upon their own views.



It would be a pleasing task, if it did not run the risk of being deemed too speculative and romantic, to pourtray in our imagination the happy condition of our humbler fellow-citizens, and of the state which their labour and their virtue sustains, when instruction in all useful knowledge shall have rendered them fit safely and profitably to possess the share in their own government which God and nature designed to be their portion—to see in our mind's eye the time when the voice of party should be still and its hand powerless; when profligate leaders, albeit in a holy garb, could no more move the million from their sober, and honest, and steady purpose well understood, than they could disturb the moon from her course in the heavens; when no jealousy of higher station or more ample wealth, on the one part, should be encountered by supercilious disdain of plebeian merit, and alarm at plebeian encroachment on the other; when each class should feel intimately persuaded that its own advantage was bound up indissolubly with the profit of all other orders in the community, and each nation should desire for its own benefit the prosperity of all its neighbours; when no echo of foreign levy should interrupt our repose, no provision against domestic strife exhaust our resources, no civil broils ruffle the serene aspect of our horizon; when with general consent many of our most costly establishments could be with all safety given up as no longer wanted to inform or to guide our system; when graceless zealots should contend no more for useless forms of faith, nor political fanatics for forms of government; when devotion to the Creator should cease to be testified by discharity towards his creatures, and wretched abstract dogmas to obstruct the progress of all the light that most improves, refines, exalts our species. But it may be better to turn from a scene which can for many a long day only vex and tantalise those who are doomed yet to linger among other realities; and direct our attention towards one or two illustrations of the consequences which may result from a people, well prepared for the task, assuming a more complete control over state affairs.

And first we may observe, that some things must ever remain in their present state, what progress soever shall have been made in improvement by the people or their rulers. There will always be a great difference in wealth, which must of necessity be very unequally distributed. There will always be a great

majority of the people whose time is chiefly devoted to laborious occupation. There will always, therefore, be a real distinction of ranks, and an artificial founded upon the Natural Aristocracy. The influence of the upper classes will probably gain as much from the intimate persuasion of the lower that their intellectual resources are greater from right cultivation, and from having more time at their command, as it can lose by the distance between the two orders being very materially diminished. Not to mention that the humblest classes will become aware of the general good requiring the property of all to be held most sacred. Hence, far from any disposition growing up to pull down those upper classes, the conviction will become universal that there are certain functions which they are best fitted to perform, and that their continuing to direct the executive government and administer justice will best conduce to the good of the humblest person in the whole community. It is therefore quite certain, that if the popular change, of which we are contemplating the possibility, only takes place when its due season has arrived, there will be no risk of society being deranged by any inroad upon the present functions, any more than upon the possessions, of the patrician classes. Whatever advantages in either the one or the other respect they now enjoy at the expense, and unjustly at the expense, of the community at large, they must be content to abandon; no further sacrifice will be exacted from them. The general improvement of the people will assuredly remove all the objections which we found (Chap. XVI.) to the existence of a Religious establishment, and render it quite compatible with the most popular form of government. But, moreover, the grounds of the position there laid down, as to the necessity of a State Church, were all intimately connected with the people's ignorance and proneness to follow various teachers. The existence of a State Church may therefore become much less indispensable when they are so much improved as to remove those mischiefs and dangers which in that discussion we had occasion to contemplate.

The Representative principle will be quite secure. It rests upon grounds of absolute, of physical necessity. No improvement of the people can ever make it possible for their whole body to meet in public assemblies, or to rule a great state. All improvement in political knowledge will only impress them the more

deeply with a sense of the inestimable value which belongs to the representative system. An universal right to concur in the exercise of its powers will of course be established; but far less disposition will be shown than at present to interfere with the conduct of those to whom the trust has been delegated.

That legislation by a single chamber should ever be willingly adopted by any people, how enlightened soever, nay rather the less likely is it to be adopted the more enlightened the people are. For the errors which a double discussion by bodies differently constituted and differently originating, is calculated to correct, are not errors of ignorance or of ordinary haste, but of the unavoidable imperfection which belongs to men, and their utter inability to see far before them; they must make up for this defect by thorough and searching inquiry, and this can never be secured unless bodies differently constituted successively examine each measure. No improvement can ever make the people more enlightened than the members of the Commons' House of Parliament were in 1834, when they passed the acts which have been adverted to in the Eighteenth and Nineteenth chapters. A second chamber sure to view all subjects with other eyes is the only remedy it affords; the only means of preventing error.

Whether the necessity of an executive power, wholly independent of the people for its existence, may not become also apparent even in the state of things towards which we are pointing our eye, is another and a much more doubtful question. The expenses are enormous; the evils are manifold; the hazards are grievous; the necessity is very far from being equally manifest. If the people are in all respects capable of choosing their representatives, it may be conceived that they are also capable of selecting their chief magistrate, and towards a state of things which shall entrust them with this power, towards a Democratic, or at least a Mixed Democratic Republic, it may perhaps be admitted that human affairs tend in modern times. All the experiments which have hitherto been made of Republican government in old societies have begun at the wrong end. The people have been called to the difficult task of self-government without having served their apprenticeship by learning political science and practical wisdom. The failure of these trials has therefore been inevitable, and it has been complete. But it is very far indeed from proving that no old country can be governed democratically.

The possibility of such a consummation is entirely dependent upon a progress having been made by the people, which they have indeed begun, but which it will require a long course of years to finish. In the present state of society an hereditary executive, however costly in some respects, however hazardous in others, is, as we have already seen (Part I. Chap. x.), absolutely necessary; it is our only safeguard against heavier costs and more desperate hazards than any to which it exposes our Political System.

## CHAPTER XXI.

## RESERVED POWERS OF THE PEOPLE.

Connexion—Influence of the Press—Popular interference; its limits—Publicity through the Press—Proper and improper influence—Illustration—Twofold mischiefs from the Press—By private Speculators; by Factions—Anonymous writing—Motives of concealed Writers—Party—Twofold evils from abuse of the Press—Athenian Mob Government—Press has disarmed itself—Progress of knowledge has disarmed it—Duty of the People.

Application of principles to Public Meetings—Popular excesses—Illustration—French Revolution; England in 1795; in 1819—Irish Meetings—General principle—Errors of Mr. Canning on our Constitution—Illustrated from County Courts; Freemen; ancient right of voting.

People's share in judicature—Athens; Rome; Modern Jury Trial—Three cases fitted for it—Its uses to the People—No admixture of evil in it.

NOTWITHSTANDING the surrender by the people of their share in the supreme power by the choice of representatives, there are certain Powers which must be Reserved to them from the necessity of the case and the nature of the thing. These are principally three in modern times: the influence of the Press; the influence of Public Meetings; and the influence of Juries in the administration of justice.

SECTION I.—*The Press.*

While the legislative power is confided to the popular representatives in whole or in part, according as the Democracy is pure or mixed, and while the executive power is entrusted either to hereditary or elective magistrates, there is an important influence, almost amounting to a direct power, exercised by the discussion of all public measures through the Press. This influence depends entirely upon the effects which such discussion produces upon public opinion, that is upon the minds of the people, by affecting whom it affects their representatives and their magistrates, sometimes exciting them to adopt measures for which the people feel exceedingly anxious, sometimes deterring them from pursuing courses to which the people feel exceedingly averse.

It must be confessed that this interference operates as an obstruction to the movements of the representative system. As far as it is effectual, it may be considered as a resumption of the delegated trust, a breaking in upon the discharge of the duties confided to the deputies. If a number of persons should employ any one to act for them as their advocate, and then prevent him from pursuing the course which his judgment pointed out as best for their interest, by meeting and passing resolutions against it, or by threatening to revoke his commission, we should be entitled to pronounce this a very unfair and a very injudicious proceeding; treating the advocate ill, and consulting badly for their own interests. Nothing indeed would justify it but a conviction that he was betraying his duty, or falling into manifest blunders in the discharge of it. But any resolutions passed for his information and assistance, any suggestions tendered for his guidance, subject to his approval, would be both fair and prudent. So the people, and they who on their part discuss public measures, would be wrong in exceeding similar bounds were the conduct of the government, including their representatives, free from all suspicion, whether of treachery or of imbecility.

But in practice these bounds are constantly overleaped, and the excess is both more likely and less hurtful in exact proportion as the people are not fully represented by their choice of deputies. If there be large classes not represented at all, then such interference can never be the subject of reprehension; it is not against the representative principle.

We may further observe, that the influence of the Press is much more slowly effectual in causing the adoption of measures which are popular favourites, than in delaying or preventing it. The occasions must be rare indeed, the unanimity of the Press and the people unbroken, their feelings deep seated and loudly expressed, to drive the government into a measure adverse to its opinion or wishes. By slow degrees alone it is, generally speaking, that public discussion can cause the adoption of plans originating more in the people's desires than in the wishes of their deputies or their rulers. On the other hand, the clamour excited against an unpopular measure has not seldom stifled it at the first, and much oftener delayed it for a while, operating in either case at the moment.

In one respect the Press is constantly operative, and produces very great good, with hardly any admixture whatever of evil. The great and immediate publicity which it gives to all the acts of the representative and of the ruler affords a most salutary check on the conduct of both, and prevents many errors being committed through ignorance or inadvertence. But this benefit of the Press can hardly be reckoned any influence or power exercised by the people. That influence or power consists in the control exerted by the printed and published and universally circulated opinions or wishes of the community. The representative and the ruler are swayed by these, and oftentimes they are not merely deterred from wrong doing, but prevented and obstructed in the honest and enlightened discharge of their duty by the clamours of ignorant or of interested parties.

The two opposite effects of this influence may be illustrated by taking the instances of its most legitimate and most improper application.

When the opinions of enlightened men, freely promulgated, are diffused and find general favour with the community; when the errors of a political system are fearlessly exposed; when the impatience of the people, under abuses of long standing, and powerfully supported, breaks out in complaints against the ruling powers; a real service is rendered to the public welfare, and no charge can be brought against the people of resuming their delegated trust, or begrudging their deputies the authority with which they have been clothed. Indeed those deputies ought to feel contented that the cause of truth and good government is thus promoted, and the general interest consulted. They are not controlled or interfered with, but find their views rather furthered than impeded.

When the virulence of personal attack deters a representative from pursuing the course which his honest and deliberate judgment dictates; when dread of incurring printed censure deters him from doing what his duty, according to his own conception of it, requires; when to gain the applause of such as regulate the Press, or to disarm their hostility, he shapes his conduct according to their wishes;—then he shamefully betrays his trust; those who thus beleaguer him, and he who suffers himself to be swayed by his fears or by his love of praise, equally

commit an offence of a very grave kind in the eyes of all rational men.

We have hitherto been regarding the Press as either an organ of public opinion, directly moved or inspired by the people, or at least as an indication and exponent of it, coinciding with the people's views, and adopted, if not authorized, by the people. It is certain that in a good degree this is likely to be the case. In the long run the Press, if the people be not split into parties, will be pretty sure to coincide with their opinions and feelings; and where there prevail party divisions, each portion of the community will sooner or later influence some portion of the Press. But it is also quite certain that there is here, as in other processes both of the moral and physical world, action and reaction. If the public sentiments act upon the Press, so does the Press upon those sentiments; and this occasions mischief of a very grievous kind to the people themselves, and to popular government. It is one of the worst evils of that form of polity, that it gives the greatest scope to this abuse; an abuse of so pernicious a kind that nothing can reconcile a reflecting mind to it but the persuasion of its being an almost inevitable consequence of free discussion, and thus regarding it as the heavy price which must be paid for this inestimable blessing.

It is in two ways that the Press thus produces its mischief. Private individuals, armed with no commission from any quarter, much less invested with authority from any power in the state, and bearing no certificate of any qualification to recommend them, assume the direction of periodical works, and do not give their names to the public. Their capacity for the task which they have undertaken is of course to be judged by the manner in which they perform it; about that there can be no difficulty or doubt. But their trustworthiness, either as relaters of facts or as guides of opinion, is a wholly different matter, and of that, the most material portion of the character which they ought to have, they furnish no vouchers whatever. They may be the most false and deceitful of human kind; they may be the most spiteful and malignant; they may be men whose names, if made known, would deprive every assertion they advanced of every claim to credit, and strip all they wrote and published of all chance of being believed or even listened to. They may have sinister and sordid views in putting forth their statements; then they may



have a personal ground of quarrel with individuals, or with parties in the state or the church ; and thus be the very last persons in the whole world whom any one would believe if the mask under which they lurk to assail their adversaries were torn away. Their narratives may be dictated by mercantile or by money speculations ; and the persons who, ignorant of the source whence these stories proceed, rush to some market to invest their capital, would be loth to risk a shilling of it on the faith of their statement did they know the purpose for which it was put forth. They may be rival authors as well as rival tradesmen, and may have published some translation of the same work, and thus have a direct interest in running down the succeeding translation ;\* but they speak in the plural number, and the reader is utterly deceived, and supposes he is hearing the sentence of a just and impartial judge, when, in fact, the opposite party has, unknown to him, crawled upon the bench, and, personating the judge, delivers in a feigned voice sentence in his own favour. Again, their views may be pernicious to the state. They may be men reckless and abandoned, desirous of change for the confusion it produces, anxious to see the most desperate courses taken for the sake of that mischief, the risk of which would make all virtuous men dread even the most prudent and cautious innovations. They may be concealed partakers of abuse, creatures engendered in corruption and sustained in their noxious existence by the filth that first warmed them into life ; their names if disclosed would make the defence which they undertake of oppression and misgovernment, their resistance to the people's rights and the people's improvement, only further those sacred interests ; but they defend the misrule on which they fatten, and assail those who would reform it with the appearance of pronouncing an impartial award upon a public question foreign to their own interests.

It is endless to go through more particulars. Whoever has lived long in political society, but more especially they who have lived in courts of law, must full surely know that by such means as these are the people supplied with narratives of fact and statements of doctrine. The practice of deception becomes nearly universal. The readers are betrayed into a confidence which

\* This is not an imaginary case ; it has repeatedly occurred.

they never would bestow were they aware of the authority upon which what they read is grounded, and the views with which it is prepared and promulgated.

If such is the constitution, generally speaking, of the Periodical Press in all free countries, wherever party prevails this engine becomes a very easy acquisition to any faction; and it is worked with additional vigour and increased effect. This, however, greatly lessens the evil; for as it is well known to which party each publication belongs, something like a rent is made in the veil which conceals the real authors, or at least, the names of their respective patrons and employers being given, the public are warned against believing what is said against their adversaries. It is still true, however, that the followers of each party are made to believe whatever their unknown agents may please to promulgate; and also that numberless things are published by them from their lurking places, which the respectable leaders of the several parties would be extremely loth to give in their own person.\*

The consequence of this abuse of the Press is twofold. There is often given to public opinion a wrong bias, which lasts long enough to create delay in the adoption of important measures, or even to produce a permanent effect upon the mind of the people. There is still more frequently an obstacle interposed to the discharge of the public duty of ministers or representatives, by the clamour excited among the constituents of the latter, and among those classes to whom the former look for support. The measures and the men have neither of them fair play. If the people really, upon due consideration, adopted the views inculcated upon them, no one could complain of the result; it is one of the consequences of a free or popular government. But what we have a good right to complain of is the effect produced by a very few persons who, to serve their own or their patrons' purposes, mislead the people, deceiving them by groundless

\* By far the worst instances of these great abuses are to be found in America, where, nevertheless, some of the editors give their names unblushingly to that society which they daily outrage by their detestable publications. This excess of effrontery could never be tolerated in this country, where, however, persons pretty generally known, almost as much as if their papers bore their names, are known to drive a most scandalous traffic in slander, sometimes to gratify political parties by whom they are paid, sometimes still more wickedly to extort money by means of threats. The Lord Chief Justice has lately obtained a most valuable enactment to check this abominable practice.

statements into erroneous opinions, or inflaming them by well-contrived violence into unruly feelings.

There was no abuse in the Athenian government more grievously felt than the power of the profligate men whose practised eloquence "wielded at will that fierce democratic." Their arts, and their shameless want of principle, are well known, and we have, in a former part of this work, had occasion to contemplate some of the mischiefs which they did. Among us there are very different talents, no doubt, brought to the same work of swaying the people; but though of an inferior order, those talents are perfectly well suited to the work they are brought to do; and, accordingly, the Press has with us succeeded to the influence of the orators, only that the latter came manfully forward in their own persons, and encountered the scorn or the execration of mankind when they were found to have been malignant or treacherous guides.

There is one remedy for all this; but to those who regard the uses of the Press as very important, and chiefly lament its abuse for their sake, it is a melancholy one to contemplate. The evil tends by its excess to work its own cure. It is said that in America no effect is produced by the assaults on private character, or even on the estimation in which public men are held, from the overdone abuse of the Press. Every one must be aware how inconsiderable, even in this country where the Press is far more pure, its influence has become of late years, in consequence of the greater prevalence of slander and violence in its productions. Thus a kind of remedy is provided by the excess of the evil.

It has often been questioned whether a restraint should not be imposed upon the Press, with a view to check those abuses by which it at once works mischief to the community, and lowers its own value for good purposes. The more closely this important question has been considered the more plainly has it appeared that any such interference would be dangerous in the extreme. Beside the certainty that it would, if effectual, increase the power of the Press to an inconvenient degree, it would tend to impede the progress of knowledge and to fetter the freedom of discussion. There would be no possibility of devising any mode of restraint which should not place an undue control in the hands of the government. The conductors

of the Press, labouring under the imperfections of the libel law, have occasionally desired that they should have a censorship placed over them, in order to be secured from the risk of prosecution under a law which is vague and uncertain, and ever liable to be abused. But little did they reflect that, a previous licence being required, it must at once destroy their independence, and thus not merely obstruct their usefulness, but undermine their whole character, influence, and means of supporting themselves. An amendment of the law of libel, which shall at once protect authors and publishers from oppressive and vexatious prosecutions, and protect individuals from the slanders of concealed enemies, giving a due check to the dissemination of seditious, obscene, and blasphemous matter, is the only remedy which can safely be adopted for the mischief.

The people, again, can only be released from the control which is now exercised over them by the progress of knowledge, and the efforts of courageous and enlightened men to stand the brunt of anonymous attacks, while they inculcate sound opinions, exhorting their countrymen above all things to think for themselves, and suffer no unknown writer to dupe and to betray them. Lord Melbourne, when at the head of the Liberal party and of the government some years ago, earned the gratitude of his country by the honest declaration which he made in the House of Lords (doubtless with some rhetorical exaggeration), that it remained to be seen how long the people would endure a Press which made it a general rule of its conduct never to tell any truth, and always to deal wholesale in falsehood. But the people must open their eyes to the errors and the vices of their false guides. They may be well persuaded of these, acknowledging them as often as the subject is broached; they may be disgusted with the reckless statements which are palmed upon them; they may feel alternately indignant and contemptuous at the solemn importance of anonymous sentences condemning or absolving, and the presumption of the dictation issued to the community and the government by the most obscure individuals, only grounding their importance upon the fact of their being unknown. But this is not enough; the people must cease to let anonymous statements influence them merely because they are repeated seven times a week: they must learn to suppose that a thing being printed does not make it true;

they must give over running after slander and scurrility as the only interesting composition ; they must regard subjects and measures as of more importance than persons ; and they must read for the sake of instruction, not for the momentary satisfaction of having their merriment excited or their spleen gratified. When the diffusion of useful knowledge shall have so far improved the habits of the people, then no such evils will result from the Press as we have been contemplating. It will be the source of great and unmixed benefits to the government and to the people ; duly checking the one, usefully enlightening the other ; saving both from the errors alike of rashness and of sloth.

### SECTION II.—*Public Meetings.*

Much of what has been said in the last section is applicable to the subject of this. The people's right of Meeting in large bodies is unquestionable in every free country. The deliverance of petitions to the government and to the legislative assemblies ; the sending instructions to their representatives ; the complaining of grievances which may have escaped the attention of those representatives ; the keeping a watch over them in order to prevent any neglect of their duty or betraying of their trust ; all these things require the people occasionally to assemble, and all of them are consistent with the delegation of the people's power. But these rights must be soberly and moderately exercised. If the people threaten their representatives or the executive magistrates ; if they dictate their line of conduct in any given case ; much more if they, chiefly by their numbers or the overawing appearance of physical force, or by the frequency and regularity of their Meetings, show an intention of usurping the functions of their deputies ; then they resume the delegated trust, and the representative principle is wholly violated.

Nothing can be more certain than that the worst excesses of the French Revolution were occasioned by the interference of the people with the proceedings of the Legislative Assembly first, and afterwards of the National Convention. Hardly a day passed without some popular commotion ; and it was the ordinary spectacle in the Legislative Body to see mobs enter the Hall, and demand the adoption of certain favourite measures. It was, I remember, usual to say in those days that the

whole of the mischief arose from suffering the galleries to interfere with their plaudits or their hisses, and from admitting strangers into the body of the Assembly when they came to petition or to remonstrate. These were, assuredly, great evils, and productive of further mischief; but they were only fruits of the same bad plant which would have shed destruction over the infant republic had the galleries been as silent and submissive as our own, and the doors been closed like ours against all intrusion. The people, or at least a portion of the people, both in Paris and in the great provincial towns, had only partially given over their power to the Assembly and the Convention. They were still far too much excited by the transactions of the day to bear in silence their exclusion from the active exercise of their power, to sit quietly by while their representatives performed the whole functions of the government. They accordingly were distributed in societies and in clubs; they had daily, or rather nightly, meetings to discuss the proceedings taken by their deputies during the morning; they arrogated to themselves the right of approving or rejecting all that was done by the constituted authorities; and they knew their own power from the physical force in their hands well enough to rest satisfied with nothing short of an admission to a direct control over those authorities. The numbers of the clubs themselves, and their immediate retainers, were sufficient to have operated upon the government; but they had a direct communication at Paris, through the municipality, and in some of the other great towns, less regularly, but almost as effectually, with the rabble of the streets—men fit for any desperate enterprise, and seeking to gain by the confusion which to all the good and the wise presents the aspect of the worst political ills. It was, in truth, the control of the government in the hands not so much of the people as of the mob; and, accordingly, the party chiefs used that mob more effectually for their own factious and selfish purposes than their influence in the legislature itself. This is no doubt an extreme case; it was during a revolutionary crisis; and had anything of the same kind been continued after the tempest passed away, there would have been established an anomalous and mongrel government, which in no respect deserved the name of representative. The excess of the evil worked its own cure. The Reign or

Terror strengthened whatever constitution succeeded that of the year 1793; and the horror of mob violence continued not only throughout the Directorial government to prevent all direct interference whatever of the people, but was the main prop and stay, first of the Consular, and then of the Imperial regimen, in both of which the people were deprived of all influence, direct or indirect.

In this country we have been at different times visited with the abuse of Public Meetings. In the year 1795 they were prohibited by statute, and, as it appears to me, without a sufficient warrant from the extent which the mischief had reached. The consequence of this was unfortunate for the government of that day. It is very possible that the right of meeting might have been so far abused in the course of a few months as to justify in all men's eyes the strong measures adopted by the legislature. It is quite certain that few could perceive the strength of the case upon which those measures were grounded, although they were easily carried by the strength of the government.

In 1819 the case was materially different. Immense multitudes had been accustomed to congregate; and there was reason to apprehend the effects that might result from such displays of physical force. Many friends of popular rights were convinced that some check had become necessary, some regulation at least of such assemblages; and, among others, I well remember my friend Lord Hutchinson, when I complained of the Six Acts, saying that he thought the Whig party should be thankful they were out of office, and that the odium of passing some such measure was thrown off their shoulders upon those of their adversaries; "For depend upon it," he said, "the right of Meeting at all is in jeopardy from such assemblages—so numerous and so crowded." My opinion, however, that these repressive Laws were not required is strongly confirmed by the circumstance that a general election occurred within four months of their being passed, and, this falling within the exception in the provisoes, public meetings were everywhere held, with all the excitement of such an occasion, and without any breach of the peace.

The late proceedings in Ireland belong to another class. They are, without any doubt, inconsistent with even the sem-

blance of a regular, above all a representative, government. Meetings of 30,000 and 40,000 persons held all over the country, and so frequently held that they seemed to be one body constantly adjourning and re-assembling, are wholly subversive of the legislature's and the government's authority. Their being peaceable in their demeanour, chiefly from the strict discipline which their leaders, lay and clerical, exercised, rather increases than lessens the risk attending such proceedings. The danger of violent outrage, the alarm excited among peaceful men, the intimidation by which some are forced to attend, others deterred from counter proceedings, are of themselves sufficient to prove their illegality. But their manifest tendency to overawe the government and the parliament is sufficient to demonstrate the necessity of suppressing them at all hazards. If they had been permitted to go on training the whole people, and so far disciplining them that only one step, that of arming with pikes, would have been wanting to convert half a million of men into a rebellious army, the highest public duty of the government would have been betrayed. But if even the system had been suffered of immense Meetings held twice a week on one subject, and showing great physical force, though never used to break the peace, there can be no doubt whatever that the government of this country would have ceased, as far as Ireland was concerned, to reside in King, Lords, and Commons.—It would have been transferred to other, and to the worst hands.

It is never to be lost sight of that such Meetings as we have been speaking of, and indeed all popular assemblies, are convoked, not for deliberation or for discussion, but for very different purposes. They are attended by men all of one opinion; all engaged heart and soul in the pursuit of one object. They meet to excite and influence each other; to give vent to feelings which they have long entertained and cherished, or declare opinions which they, or some person for them, have already formed. They bear no contradiction; they listen to no reason. They are bodies of men assembled for action, not for consultation; their real objects are to prepare for some violent act, and to impress the government with fear.—A government which can suffer them, no longer deserves its name, for it has abdicated its functions.



Upon the whole we may rest assured that the right of Public Meetings must, to be safe for the state and consistent with a representative government, be either temperately exercised from the good sense of the people themselves, or it must be placed by the legislature under wholesome and wise restraints.

If not abused, there can be no doubt that the right of Meeting is of great value to the people. Some reasoners who have a prejudice against it, and the late Mr. Canning was at the head of them, have argued that the mixed constitution of this country did not recognise any numerous body acting, unless in a corporate capacity. They have held corporations of all kinds, whether formally and nominally such, or only quasi corporations, that is, persons of a certain specified description, persons of a "defined caste," as Mr. Canning called it, as well entitled to meet, and as doing no harm by their combined proceedings. All others they conceived to be excluded. I confess I think this a somewhat fantastic refinement. No one can see much definition in the thirty thousand freeholders who have a right to throng the sheriff's court in the West Riding of Yorkshire; nor even any peculiar virtue in the assemblage of ten thousand persons in name and legal description, as well as in substance, corporators, the freemen of London. The genius of our constitution admits all men to much more important offices than attending public meetings, and admits them without any regard to class or caste. Did these reasoners never hear of a *tales de circumstantibus*—jurors chosen to make up the special jury panel's deficiencies? These in practice are, it is true, generally taken from the common jury panel; but by the letter of the ancient constitution they are to be chosen indiscriminately from the bystanders who happen to be in court at the time the cause comes on. Then who were the original voters for members of parliament and for most corporate officers in boroughs? All the inhabitants, without qualification; that is, every person dwelling in the several boroughs. We may rest assured that this fanciful theory rests neither upon any reasonable ground nor upon any learned view of our laws.

SECTION III.—*Judicial Functions.*

The most important department in every state is the administration of justice. It is, indeed, for this inestimable benefit that society is chiefly framed; and it is the price for which men are induced to give up a portion of their natural liberty when they place themselves under the restraints of regular government. As it would not be too much to affirm, that even the worst judicial system, under the most absolute despotism, is better than the lawless state of barbarous life, so it is certainly true that the judicial portion of the most free and enlightened state is the great zone which embraces and binds together the entire political edifice, indissolubly connecting its upper and lower portions; mitigating the evils endured by the humbler from the possessions and the power of the exalted classes; protecting the few from the oppressions of the many; cementing and consolidating the whole of the great social pyramid.

It is of great consequence to the people that they should have a share in so important a branch of the state. It is the nature of all democratic and of all mixed governments, both in ancient and in modern times, to confer this high privilege upon them. In Athens the judicial business was in their hands far too entirely; they formed the members of the great tribunals, excepting the Areopagus, before which all questions of civil or of criminal justice came. This system led to the greatest evils; it occasioned the most cruel oppression of those who had lost the popular favour; the most shameful escapes of the criminals whom the people liked. The arguments, or rather the topics of declamation used by the advocates, both when addressing the courts and when writing for parties who were nominally to defend themselves, are such as plainly prove that the pursuit of the truth was the last thing thought of in such trials. In Rome the people acted as *judices* or jurors, to assist the magistrates, who were also appointed by popular election. This was a far less exceptionable course of proceeding than the Athenian; and much less injustice both to individuals and to the public was wrought by it. In modern times all free states have adopted trial by Jury, generally in both civil and criminal cases; always in criminal.

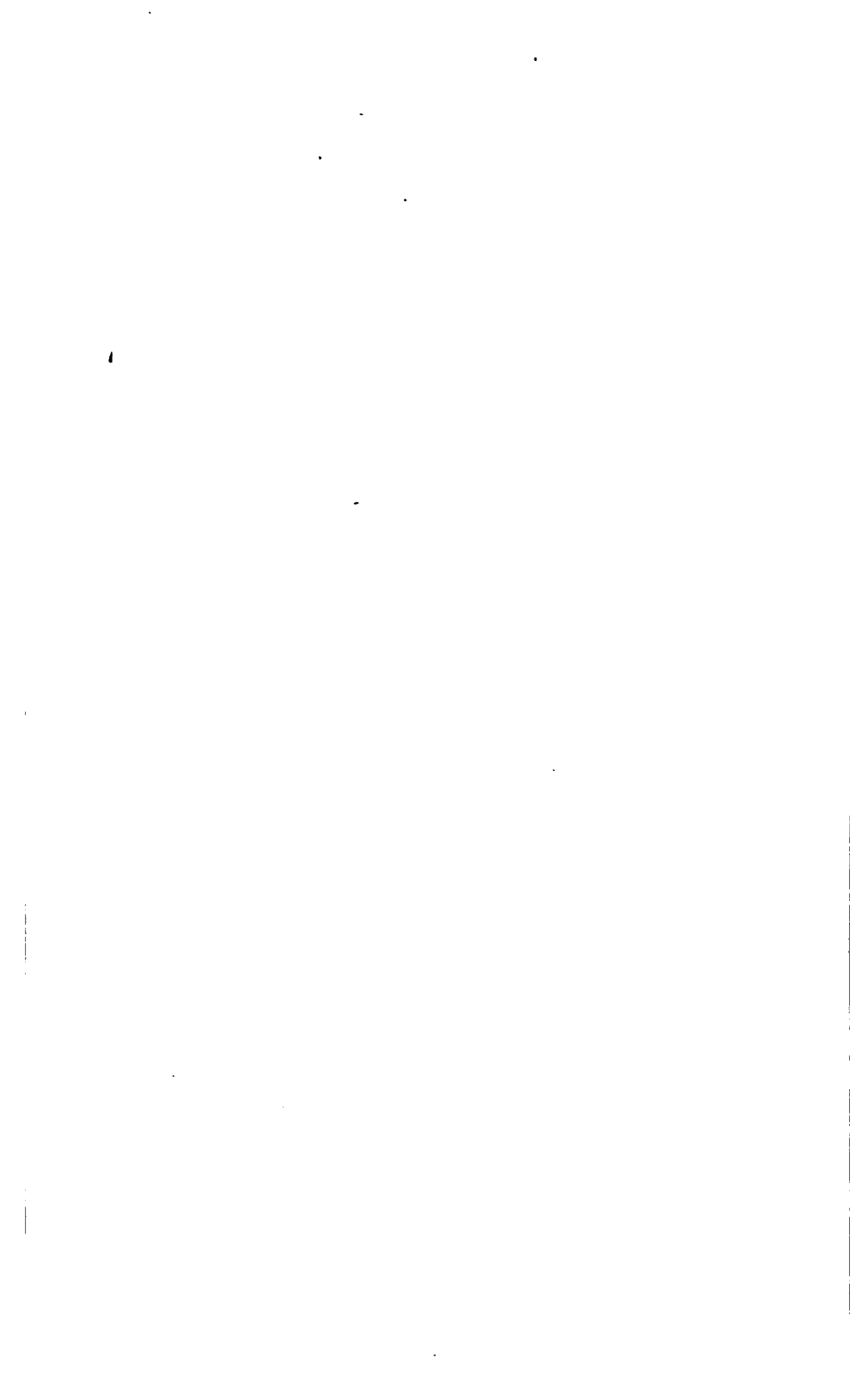
It is not easy to overrate the importance of this function to the state, or the benefit which the people derive from the exercise of it. Many questions are far better determined by one or more judges; points of law, of course, must always be left to them; but mere questions of fact, too, are oftentimes better entrusted to their investigation. Sometimes an arbitrator is the best judge; and when a long and complicated investigation of facts, especially if these are in many parts mixed up with legal questions, is left to a single person of competent learning and experience, a far better trial is obtained than any judge or any Jury could afford. But in three classes of causes the use of Jury-trial is admirable, and all experience satisfies us of its virtue. *First*, where a question of conflicting evidence arises, nothing can be better than that several persons of different habits of mind and various capacities should discuss, sift, and decide it. *Secondly*, where an award of damages as a compensation for an injury received is to be made, the same diversity of the Jurors' minds and views gives the best security that a right amount will be fixed upon. *Thirdly*, when there is a party to be tried, or a right investigated, the government being the prosecutor, or some powerful person or corporation being the plaintiff, it is essential to liberty that judges named by the Crown, and always belonging to the same class with the powerful party, should not decide on the fate of the person or the cause; therefore the equals of the less powerful party are the only persons in whom this important office can be safely vested.

Such are the benefits of Jury-trial to the judicial system. To the people it is of a still further use. They are thus habituated to public business of the gravest and most important description. They become conversant in the laws by which their rights are defined, and their duties regulated. They learn the nature of the government under which they live, in its most essential branch. They act and observe under the superintendence and instruction of a virtuous, a learned, and an experienced functionary. Withdrawn from all the turmoil of the popular assembly, its violence, its rashness, its deafness to reason, its abnegation of fairness and candour, they bear a part in a solemn and important discussion which can only be conducted by rational measures and determined according

to the truth of the case alone. They are engaged in an inquiry where only truth is the object of pursuit, and all matters are disposed of on their real merits. The political education of the people is incalculably forwarded by this proceeding; their moral habits are much improved by it.

There is nothing more certain, too, that, unlike the other powers reserved in the people's hands, their judicial office is performed and all its precious benefits secured without any risk being run of evils. No mischief can ever ensue from it, as the price paid for so great advantages. If it be said that errors are unavoidably committed by Jurors into which professional judges would not fall, the answer is, that in all well-constructed judicial systems, means are provided for correcting these, or for obviating their effects. If it be alleged that an obstinate Juror may, in defiance of the truth, and in disregard of his oath, suffer the guilty to escape, from party or from personal bias; it must, on the other hand, be borne in mind, that this is a small price to pay for the perfect security which a Jury affords to all men, even the humblest, against the ruin that power and its minions might bring upon them. As long as a Jury must be appealed to by the most powerful parties in the State in order to overwhelm an obnoxious individual, we may rest assured that there is little hazard of such a catastrophe destroying an innocent man. This is a real power, a solid influence, an efficacious check to misgovernment, placed in the hands of the people, and never likely to be abused.







## CHAPTER XXII.

GOVERNMENT OF ENGLAND—ITS STRUCTURE IN THE  
ANGLO-SAXON TIMES.

Obscurity of early Constitutional History ; its two causes—Royal Prerogative in early times—Errors from National Vanity and Party Spirit—Resemblance with other Feudal Monarchies—Difference as to Legislative Power—Royal Authority traced from the Roman times—Saxon Constitution—Heptarchy—Constitution after the Union—Power of the Crown—Great Officers: Eorlderman; Gereefa; Borough-reeve—Danish Body-guard, or Thingmann—Legislative Power—Witan and Witenagemote—Royal Revenue—French and Anglo-Saxon Monarchies compared—Aristocratic nature of the Anglo-Saxon Government—That Government not properly a mixed Monarchy.

THE early history of every Constitution must of necessity be involved in great obscurity. Two causes contribute to keep us in ignorance and uncertainty respecting the origin, and even respecting the first stages in the progress of all political institutions.

In the first place, all Governments must have been established long before the period of written history, because men must have lived together in society, and even brought their civil polity to a considerable degree of maturity, before any writer devoted his labour to record their progress in the arts of government. The want of written annals is but ill supplied by tradition ; for that can never mark the successive changes in the form of government, and must always confound together the dates of different events. Then the blank in authentic or accurate accounts is always supplied by a plentiful admixture of fables, feigned by the superstition or national vanity of the people, or invented by the mere exercise of imagination in the absence of true narrative. Hence the accounts which come down to the earliest historians are always a confused mass of facts and fictions, which they are little better able to digest and to purify than ourselves. Even the colonial establishments of both ancient and modern times form no exception to these positions,



because the founders of them only carrying out with them a portion of the institutions already existing in the mother country, the true origin of the Colonial as well as of the Metropolitan Government is in truth one and the same.

But, in the second place, the province of History itself, after men have begun to write it, presents anything rather than a satisfactory or trustworthy record of the successive events which have been the origin of the constitutions ultimately found established in different countries. It is only in recent times that Historians have taken any care to describe the political constitutions of the nations whose annals they undertake to preserve. In ancient times, with scarcely any exception, and in modern times, until within the last two centuries, Historians assumed that all the civil institutions of the countries to which they belonged were matter of universal notoriety to the age in which they lived, and, moreover, regarding such subjects as of inferior interest to their readers, they confined themselves to describing the great events of war, or the sudden revolutions effected by violence, leaving us in the dark respecting the most important parts of the civil polity established in each æra and country. Hence, while the Greek and the Roman records contain a full detail of the battles, the sieges, the violent seditions, the massacres, which disfigure the early history of our species, and from which no period of its annals is exempt, we are left in doubt or in the dark as to many points of extreme interest respecting the institutions by which men's rights were protected, or their duties enforced, or the exigencies of the public service met; and are fain to glean our knowledge of these truly important matters from occasional notices in the speeches that have been preserved, or from the discussions of philosophers on Moral and Political questions—discussions which always assume things to be known that have never reached our times. Of this many instances occurred in our examination of the ancient constitutions in a former part of this work (Part II., Chap. x. *et seq.*, xiv. *et seq.*, xvi. *et seq.*). But the same defect is perceptible to a great extent in modern histories. The preservation of the laws made from time to time, no doubt affords important materials, as do the records of political changes that have happened. But many things exist in every form of government which the records of statutes fail to represent; and he would have a most imperfect knowledge of

any constitution who should confine his study of it to the written law. It was only in the eighteenth century that the history of institutions, of manners and of customs, what may be termed the General History of Society, began to be written. The brilliant success of Voltaire in his truly philosophical work, and of Robertson in his general view of European history, has founded a new and invaluable school of Political science—which the great failure of others\* has not been able to destroy. But whoever would learn the political annals of the nations composing the great European Commonwealth, will look in vain to their Histories for information upon many of the most important branches of the subject. The debates of the English Parliament, and the controversies among party men and speculative reasoners, which existed in the seventeenth century, throw much light on the unwritten law of the constitution at all times; while we have already found how difficult it was to ascertain the most important particulars connected with the successive changes in the structure of the French Monarchy from the entire want of the one of these sources of information, and the scanty amount of the other.

The Constitution of England, unless in the circumstance of our Parliamentary debates having for the last two centuries drawn its original principles and early history into public discussion, affords no exception to the general rule. The early period in which our civil institutions were founded is involved in great obscurity. The origin of these institutions, the shape which they at first assumed, the changes by which they were so moulded as to approach their ultimate condition, are all matters of doubt, and have given rise to controversies which there are no means of settling with any degree of satisfaction, controversies through which the candid student of our political History, only anxious in the pursuit of truth, finds it impossible to trace his way, or to avoid being bewildered among conflicting assertions.

The first question that presents itself to the inquirer upon the early structure of the Constitution relates to the degree of freedom enjoyed by the People, and the extent of the power vested in the Sovereign. It is very natural for a nation which highly prizes its liberty, and values itself upon the superiority enjoyed

\* Dr. Henry's bad execution of a similar plan applied to England is well known. Mr. Miller's is an excellent work, though in many parts speculative and even fanciful.

till within the last half century over all others, to plume itself also upon the length of time during which it has possessed so envied a distinction. A nation feels the same pride in this respect that a family does, and loves to trace back its nobility to a remote period of time, as individuals love to boast of the honours enjoyed by their remote ancestors. Hence, as might be expected, the English, and more especially that party among them which chiefly maintains popular rights, have fondly traced the origin of our free institutions to the most remote ages, and have easily lent themselves to the belief that there never was a period when a system of representative Government did not exist in the country. Under various names, they consider a Parliament always to have formed a portion of the government, whether a Great Council or a Witenagemote, or Michelgemote, or a Colloquium, or a Parliament.

In these theories there is some truth and some error. To hold that representation always existed is manifestly absurd; it is a position borne out by no historical facts; it is even plainly contradicted by the known facts recorded within the period of authentic History. We have already seen the clearest proofs of this in tracing the origin of representation; we have found that at the Conquest, and for nearly two centuries later, there were no representatives even of the counties; that the greater Barons or Peers sate in one Chamber with the lesser barons or free tenants holding their lands, like the greater, directly or *in capite* of the Crown; that in the thirteenth century the counties began to send Knights as representatives of the lesser freeholders whose personal attendance was thus excused, that it was only towards the latter part of the century that the burghesses, or inhabitants of the towns, were represented, and that they, with the Knights representing counties, formed a body apart from the Peers, and had a chamber of their own. (Part III. Chap. VII.)

It was therefore a most violent exaggeration into which Lord Camden\* fell when he affirmed, with undoubting confidence, that at all times every portion of England was represented in Parliament, or, as he phrased it, that "at no period was there a single blade of grass within the realm unrepresented." The antiquaries—of whose lore he spoke with a contempt equally

\* *British Statesmen*, vol. iii.—Art. Lord Camden.

dogmatical, as subverting our liberties by their "fantastical speculations"—both come far more near the plain matter of fact, and do those liberties much better service when they show representation to be an improvement of comparatively recent date, and prove that if before the thirteenth century the country was represented, it was only virtually, and not actually, inasmuch as the towns sent no one to Parliament at all, and of the county members those only sat in it who attended in their own proper persons,—none but tenants in chief of the crown having any place in the great council of the nation.

But if the reasoners who have held the higher language upon the antiquity of our Constitution, had only maintained that we have no record of any time in which the power of the Sovereign was absolute, they would have asserted a truth which cannot be contested. There is every reason to believe that, from the earliest period of our history, the Monarch's authority was of a limited extent. In this respect our history differs not at all from that of the other Monarchies which arose out of the Feudal system, or indeed rather formed a part of that system. Those who fixed limits to the royal authority were in England, as everywhere else, the greater Barons, with their dependents or vassals, and aided, no doubt, also by the concurrence of the lesser landowners in their schemes of ambition, of resistance to the Prince, and of war with each other. Here, up to this point, the history of the English Government presents no exception to that of the other feudal kingdoms.

But, the next position which we have to lay down presents a distinguishing feature in the English Government; for it is a truth to which our Constitutional History bears testimony almost as irrefragable, that the legislative power, in other words, the supreme power in the state, was shared at all periods of time by the great landowners, the Barons, and that it was probably shared, in some degree, by the lesser Freeholders also. This latter position may admit of somewhat more doubt; the share of the greater Barons seems to be incontrovertible.

In the times of the ancient Britons, before the Roman conquest, the whole country was under petty Princes, who waged continual war with each other, but united their forces by common consent under Cassibelaunus, King of Kent, to oppose

Julius Cæsar.\* The Princes appear to have had less power over their subjects than those of Gaul. But of course anything like regular government was out of the question; only the leading men here, as among the Germans, exercised great influence as a Council of Officers under the Chief. The common people appear to have been almost in a state of slavery to the chiefs: but there can be no doubt that the same Councils which were held in Gaul and in Germany upon public affairs attended by their chiefs, were also held in Britain.† The Provincial Government of the Romans of course was established here after their conquest. Three legions of 42,000 men were stationed in the country, and the governor or proconsul exercised arbitrary power over the inhabitants. There were, in the later times of the empire, three of these officers: one termed *Dux Britannie*; another *Comes Britannie*; and the third, *Comes Littoris Saxonici*, as opposed to the Saxon invasions during the third century. After suffering the greatest oppressions under the Roman Government, and also from the incursions of the Scots and Picts in the north, when the increasing weakness of the Empire rendered it impossible to aid them against the Barbarians, the Britons called in the assistance of the Saxons, who, imitating the policy of the rider in the fable, when the horse asked his help, subdued them and retained peaceable possession of the country until interrupted, some centuries later, by the inroads of the Danes. The first invitation of the Saxons and Angles took place in consequence of a general council held by Vortigern, the most powerful of the British Chiefs, in the year 449; and the conquest of the whole country was not completed till the end of the next century. Eight separate kingdoms were then established, but the union of two of these made the whole amount to seven, usually called, from thence, the Heptarchy.‡ This division of the country continued above two centuries; for although the seven kingdoms are commonly represented to have been united under Egbert in 827, it is certain that he only obtained a partial and uncertain dominion over the greater part of five; that he never had any footing in the sixth, and that he and his son Ethelwolf never even took any other title than King

\* De Bel. Gal., v. 11.

† Ib., vi. 20.

‡ Sevenfold Government.

of the West Saxons. Indeed long before his time, in the sixth century, the more powerful Kings of Wessex, and afterwards those of Northumbria, used to take the title of *Breitwalda*, or governors of Britain—a distinction which only ceased in 670, on the death of Oswy. Oswy was the seventh *Breitwalda*, and Egbert called himself the eighth. Alfred, his grandson, was the first prince who was called King of England, and his grandson Athelstane first really ruled over the whole United Kingdom in 927, calling himself sometimes King of the English, sometimes of England. The Saxon Monarchy was not of long duration: the Danes, in 1016, entirely defeated and conquered that people; and after a restoration for a very short period of the Saxon line, the Norman Conquest, in 1066, finally overthrew it, establishing a foreign family upon the throne, and a foreign nobility in possession of the landed property of the whole country.

The Constitutions of the Saxons appear to have been the same in the several kingdoms of the Heptarchy, and afterwards in the United Kingdom. The descent of the Crown was irregular, because the ideas of men on hereditary succession were not matured; and when a prince left a son, more especially if that son was very young, a dispute frequently arose between his claims and those of his grandfather's second son, that is, the young prince's elder paternal uncle. The choice in such cases devolved upon the leading men—the chief landowners or thanes of the country; and even when there existed no dispute, the form of an election appears in all cases to have been observed, and the Sovereign is always said in the Chronicles to have been chosen King (*electus in Regem*). At his coronation, a ceremony deemed essential to the perfection of his title, and performed by the chief prelate, the primate, he was presented to the assembled people, who, however, never had any real voice in his election, but only by their acclamations gave an affirmative answer to the question put, asking if they approved, or took, or acknowledged him for their King. The power of the King never was absolute, nor anything approaching to it, but it was great, and his influence was greater. He had not only far larger possessions than any of the thanes or lords; his possessions were nearly equal to those of them all put together. Thus in the kingdom of Kent there were 430 places, or estates, and of

these 194 belonged to the King. The rest were divided among two Prelates, as many Abbots, the Queen Dowager, and six Thanes, making in all eleven principal proprietors, beside whom there were smaller owners or sub-tenants, holding of the eleven thanes, as these held of the crown. In war the King commanded all the forces; he was the supreme judge, receiving appeals from all other judicatures, and sharing in all the fines paid upon conviction, according to the usual Saxon, and, indeed, feudal practice of commuting all punishments whatever for fines. The great officers—the Earl, Eorlderman, or Governor of the County, the Gereefa, Sheriff, or Viscount under him, the Borough-reeves, the Judges—were all appointed by the King, and removable at his pleasure. I speak of the general state of the prerogative, although by the laws of the Confessor the Hertochs, or Dukes, and Sheriffs, are said to be chosen by the freeholders in the yearly folkmete. But in earlier times the Crown clearly had the appointment, and Alfred is recorded by Asser, a contemporary writer,\* to have removed all the ignorant eorl-dermen, and replaced them with others. He could grant “his peace,” that is, a protection from the pursuit of enemies, to any one, and demand money or service for it; and within four miles of his Court all were secure. His first vassals did him homage by attending three times a year on his Court, and he had a right to their services in war, with those of their sub-vassals or retainers, according to the immemorial Saxon and indeed feudal usage, which annexed military service to the tenure of all lands, the service of the tenant *in capite* being due to the King, that of the sub-tenant to his Thane, Hlafod, or Lord. But except arming his immediate retainers, the King had no standing army or regular guard. The Danish Princes introduced this practice, probably from the insecurity of their conquest, keeping on foot a guard called *Thingmann* or *Thinglate*, of 3000 men, selected from their whole forces, for whose government Canute compiled a code of rules. But this was an institution unknown to the Saxon polity, or even to the Norman, after the Conquest. With all these prerogatives and means of influence it is plain that the Sovereign’s authority must have been very extensive.

The legislative power, however, appears never to have resided in the monarch. Great as his influence was, and likely to

give him overwhelming power in passing laws, he nevertheless must resort to his council, or *gemote*, to make them. There is no trace of any period at which their share of passing laws did not belong to the *witan*, or wise men, or councillors of the king. These formed his council; they were never very numerous, seldom exceeding thirty, never sixty; and the laws were made in the joint names of them and the king. Thus we find Ina, King of Wessex, in 688, making seventy-nine laws at his *witenagemote*, "with the advice of his prelates, eorldermen, wisemen, and clergy." So Edgar, in 971, long after the union of the Heptarchy, speaks of the laws which had been made by him and his *witan* (Ll. Sax. 80), and this form, as well as the substance, was universally preserved. As for taxation, the royal revenues formed the main body of the public income, and the services of the crown vassals superseded salary in the civil as well as pay in the military department. But direct taxes were occasionally levied, and frequently by the king without consent of the *witenagemote*; though certainly the most considerable of them, the *Danegelt*, originally raised in 991, to buy off with tribute the Danish invasion, was imposed by the *witenagemote*. It was continued, after many promises to repeal it, by successive sovereigns, until the reign of Henry II., when it was finally abolished. One source of revenue, however, appears in these times always to have been under the immediate power of the king; he levied duties of customs upon imported goods. His officers also raised contributions on the monasteries and rich proprietors, both the landowners in the country and the burghers in towns. As for the advantages which he reaped from the fines paid by his vassals on succession to or alienation of their fees, as well as from the marriage and wardship of minors, these were rather part of his landed property than of his revenues, and were equally enjoyed by the other lords of the soil. The regular revenue chiefly consisted of the royal property and of the direct taxes which the *witenagemote* raised. It must further be observed that, beside sharing the legislative power, the *witenagemote* also shared the executive functions of the government. By degrees they seem to have had a voice in the choice of the governors and sheriffs of counties. All great acts of state were performed in their meetings. Treaties were signed by them as well as by the king; and the power of making both war and peace became vested in them



jointly with the sovereign. Indeed the necessity of having their concurrence when the king had no standing army, and could only rely on his own vassals for service in war, must at all times have made it highly expedient to act in concert with the great allodial proprietors, who owed him no military service other than they might voluntarily undertake ; and hence a reference of all questions of peace and war to their assembly appears to have become a necessary course of proceeding. Even in other countries, where the States had less regular power, they were convened on such occasions.

In France, as we have seen (Part I., Chap. x.), the sovereigns had in early times a means of maintaining their power and of reducing the assembly of their states to insignificance, which our sovereign never enjoyed. This power was curbed by that of the great feudatories, the six other princes, who formed, as it were, members of a great federal community ; and accordingly the English sovereigns were more powerful in proportion to their great vassals than the French. But a very material difference existed in the relations in which these princes stood to their councils or states. The Imperfect Federal Union in France produced its usual effects, and enabled the king to overpower any one province by the force which he derived from the rest. Hence, when the States of one rejected a law, or refused supplies, he had recourse to the others. So would it have been in England had the division of the Heptarchy continued, and the King of Wessex been only the most powerful of the seven princes. Happily for both our regular government and our legislative freedom, the whole were early moulded into one. The sovereign could not appeal from one to the others : he was forced to consult the general council ; he was obliged to share with them his legislative functions ; and their voice became a real and effectual control upon his power, instead of falling into a mere form or little better, as in France, where the States were only assembled to aid the king with their information, or to prepare the way for their co-operation in his wars, or to hear him publish such ordinances as he was pleased to frame for the government of his dominions.

After the Norman Conquest the Royal authority was greatly increased, and came, notwithstanding the legislative power of the great council now called the Parliament, greatly to exceed

that of the French Monarchs. Before the Conquest the most effectual check to it arose from the consolidation of landed property, of many great fiefs in the hands of a very few great lords. As long as these fiefs were vested in a great number of crown feudatories, there was no chance of their offering any resistance to the far superior resources of the sovereign. But in the tenth century three nobles, Godwin, Leofric, and Siward, had engrossed so large a portion of the country with the fourteen or fifteen earldoms conferred upon them and their families, that they more than overmatched the King, whose principal security lay in fomenting divisions among them. The whole spirit of the Saxon institutions was indeed eminently aristocratic, like those of all the feudal Monarchies. Not only the privileges of the great men, the Thanes, were ample, but there was a regard had to rank and blood running through every arrangement of the state policy. The violation of an *ethel* born or noble woman was paid for by a higher *murde* than that of an *un-ethel* or common person. The murder of all persons was in like manner paid for by a *were* or *were geld*, nicely adjusted to their relative rank. Nay, the testimony of persons was weighed in the same patrician balance, the oath of a tenant in chief, a King's thane, being of equal avail with that of six carles or peasants, and that of an eorlderman being equal to that of six thanes. A strange instance of this is preserved in the Saxon Chronicles. One Alfnoth sued the Abbey of Romsey for a piece of land; a jury of thirty-six thanes were about to decide the cause, and had retired, when Alfnoth, the demandant, challenged the tenants, the Monks, to prove their title by oath; the Eorlderman, patron of the Abbey, interposed, and the Court held his oath to be decisive, giving judgment for the Monks, and condemning Alfnoth to forfeit his goods and chattels for his false suit.

It is clear that the Saxon Government was an Aristocratic Monarchy, a Feudal Aristocracy in the strictest sense of the word. The whole power in the State was shared between the Sovereign and the nobles, clerical and lay. The King had much opposition to encounter from their great possessions, from the numerous free followers over whom they exercised an absolute control, from the still more numerous hordes of serfs whom they possessed in property, and who were for the most part attached to the soil of which they were the only cultivators, from

the warlike habits of these chiefs, and the habitual exercise of violence in which they lived, reduced into a system and termed the right of private war. The superstitions of an ignorant people gave the priests an ascendant, which interposed another kind of check upon the Prince's authority, while the legislative functions of the state, what is, properly speaking, the supreme power, was shared by the King with the assembly of the Prelates and temporal Lords. With all these checks to his power it was still very great, from his ample possessions, his numerous vassals, and the divisions of those chiefs who were his natural adversaries. But to represent his prerogative as unlimited, and his government as despotic, would be a gross abuse of language; it would, indeed, argue an entire ignorance of the Anglo-Saxon story.

Yet he would not commit a much less considerable error who should represent, as some partizans of popular rights have done, this ancient constitution as Mixed in the modern sense of the term, and containing the democratic principle which grew up with it in a later age. Nothing can be more certain than that the people, the commons, had no share whatever, direct or indirect, in the government. Nothing can be more manifest than that there was neither actual nor virtual representation in its structure; and that neither the lesser freeholders attended the Witenagemote in person, nor the burghers either personally or by deputy. They who have fondly imagined that they could trace in these remote times any semblance of the Constitution now established among us, have bewildered themselves in obscure paths, where the lack of light enabled their fancy to conceive things that had no real existence. They therefore, in exerting all their ingenuity, whether to embody the creations of their imagination, or pervert historical facts to suit a particular theory, have, with the best intentions towards popular rights and free institutions, done a very unacceptable service to the cause they patronized. Whosoever founds his esteem of any constitution upon the remote antiquity of its origin, may depend upon it that he of necessity limits its approaches to perfection, and restricts within narrow bounds his own efforts for its improvement. Besides, the institutions of a rude age must needs be most imperfect and little suited to the wants of a society advanced in civilization and refinement; and if those things alone

are to be valued and maintained which have had their existence among barbarians, civilized men must of necessity abandon the most precious results of political experience. Of the numberless evils entailed on the community by the feudal aristocracy which formed our more ancient Constitution, we have already had occasion to treat in the second part of this work (Chap. VII.). It may be fairly questioned if any society above the condition of men in the rude state, ever existed in a more wretched condition than that of England at the very period to which those reasoners, of whom I have just spoken, are so fond of bidding us look for the genuine principles of our free Constitution.

## CHAPTER XXIII.

## GOVERNMENT OF ENGLAND—ANGLO-NORMAN MONARCHY.

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William the Conqueror—Lord Coke's Error—Influence of Foreign Dominions—Great Possessions of the Conqueror's Family—Royal authority not absolute, though great—Parliament or Colloquium; its composition—Extension of Feudalism by William—Almost all his immediate successors usurpers—Occasions of assembling Parliament—Examples: Henry II.; Stephen; Richard I.; John—Taxation—Legislation—Henry II.'s profligacy—Royal power over the Church—Two practical tests of Royal authority—Tyranny and profligacy of the Anglo-Norman Kings: William I.; William II.; Henry I.; Henry II.; Richard I.—Anglo-Norman Monarchs practically almost absolute.

THERE can be no doubt that William was enabled to consolidate and extend the Royal authority from the period of his accession to the Crown. But much controversy has been raised upon the line of policy which he pursued, and even upon the course of his public conduct. While some have contended that he entirely changed the ancient policy of the realm, introduced the feudal system which had been established in Normandy, and fortified his authority by the extirpation of the ancient nobility and the transfer of all the landed property to his followers,—another class of reasoners have denied that he effected any change at all in the ancient Saxon institutions, and have strenuously contended that he obtained the Crown not by his victory over Harold, but by the will of Edward the Confessor, arguing that *conqueror* means in fact only *conqucestor*, a person who succeeds by devise or by any other mode of purchase, as contradistinguished from one who takes by inheritance. Some indeed have been so inexcusably careless in their statements as to regard his title in the light of a devise, or at least of an appointment by the Confessor to him as one of the inheritable branches of the Saxon royal family,\* and some in answering them have fallen into an

\* Of this class is no less a feudal lawyer than Lord Coke. In his Commentary on the Statute of Merton (2nd Inst.), he mentions the marriage of Robert, William's

almost equal error by inadvertence to the canons regulating the descent of lands.

Both these views of the subject must be regarded as exaggerated and erroneous. The record of Domesday Book clearly shows that many persons retained their property who had held it in the Confessor's time; and although, in consequence of the rebellion which took place during his absence in Normandy, the greatest changes took place in the distribution of landed property from the number of confiscations which ensued, there seems no sufficient ground for the charge brought against him of encouraging disaffection underhand, in order that he might have a pretext for making an universal transfer of landed property to the Normans. On the other hand, to deny that the military force which he introduced into the country, and the possession of his foreign dominions, enabled him to curb the Barons and exact a much more vigorous rule than the English had hitherto known, would be shutting our eyes to the obvious facts of the case. The never-failing consequences of the Imperfect Federal Union (Part III. Chap. v.) were certain to flow, from the sceptre being in the hands of a prince who held on the continent a Principality equal to one-third of the French Monarchy. For nearly three centuries\* the English monarchs were endowed with these resources; and

father, with Ariotta his mother, after his birth, and conceives that though it made him legitimate by the custom of Normandy, and so inheritable to the duchy, it could not give him a claim to the Crown of England, because no legitimization *per subsequens matrimonium* is known to our law, the famous enactment at Merton having of course been declaratory only. But even had William been born in lawful wedlock, he could not possibly have any claim; for his only connexion with the Confessor was the marriage of Edward's father with William's great-aunt, the sister of Richard II., his grandfather; consequently he had no blood of the Saxon purchaser, and was a mere stranger, be he ever so legitimate. As well might our Queen claim the crown of Denmark, being the great-niece of Matilda, the Danish King's grandmother. It is a somewhat singular circumstance that the Judges, in delivering their opinions in the House of Lords, in the great case of *Doe v. Vardell*, in 1840, rested their argument mainly on this passage of the 2nd Institute, which contains an error so gross as to throw great doubts on its authenticity, and, if authentic, to destroy the weight of the authority, beside every one of the three marginal references being erroneous. The Chancellor (Lord Cottenham) acceded to the opinion of the Judges avowedly on the score of Lord Coke's authority, conceiving it to be now for the first time cited, whereas it had been cited and rejected in the Court below, the King's Bench, from which the case came by writ of error. I have the satisfaction of knowing that the opposite view which I took of the whole question has met with the general concurrence of foreign jurists—in particular, Dr. Storey; see the last edition of his celebrated work on the Conflict of Laws.

\* Two hundred and ninety-two years.

the event to which they owed their crown, a military conquest, with the constant presence of foreigners surrounding their persons, as well as the possession of so vast a proportion of the property of the country by those foreigners and their descendants, made the exercise of arbitrary power a far easier and safer thing than it had been under the native princes. Another change took place of great moment, and of extensive influence in augmenting the power of the sovereign. It is certainly most incorrect to represent the Conquest as having introduced the feudal policy; but it is certain that the Normans had established that scheme of government much more systematically and fully than any other people; consequently William never rested till he had moulded the less perfect Feudalism of the Anglo-Saxons after the Norman model. Allodial proprietors were tempted by offers of protection, and wearied out by vexatious proceedings, till they surrendered their independent titles and became, the more considerable sub-vassals or tenants in chief of the Crown, the less considerable vassals of other great lords, who themselves held of the Sovereign. The Conqueror derived from hence no little addition both to the splendour of his Court and the real power of his office; for all his vassals held by military service, and each when he took the field was attended by his own vassals or sub-vassals.

The vast possessions of the king and his family must have prodigiously strengthened his authority. William had 1432 manors all over England; his brother Odo, Bishop of Bayeux, 450; Geoffrey, 280; Robert, Earl of Mortagne, 937, making in all no less than 3099 manors belonging to the family, beside the sixty-eight royal forests, as well as many parks and free chases. Nor must we omit a most important change in the allegiance of the vassals introduced by the Conqueror, and calculated materially to curb the power of the Barons. Formerly the vassal swore to his baron fealty absolutely; he was both forced to follow him in rebellion against the Sovereign, and his oath of fealty to the Sovereign contained an exception of his duty to his liege lord. The Conqueror would not suffer any such limited or divided allegiance; he required all to owe him fealty without any exception; and he forfeited the lands of the sub-vassal as well as those of the vassal himself, if the tenant followed his liege lord in rebellion against the King, the universal overlord of the realm.

It has been said that Normandy was rather an apparent than a real increase of the English sovereign's power, and of this opinion is Mr. Hume (Hist., vol. i. App. 1). It cannot be denied that the Norman Barons, always aided by the French King in their attempts at throwing off the Duke's yoke, gave frequent occasion of annoyance to their prince, and often distracted his attention from the management of his English affairs. Yet no one can doubt that he derived considerable accession of power from so noble a principality; he often used his foreign troops directly in the subjugation of his refractory English Barons; and it is certain that the first establishment of a constitution, nearly resembling our present system, was after that duchy and all the continental dominions had been severed from the English Crown.

But nothing certainly can justify those who have contended on the other hand that there were no limits whatever affixed to the power of the Sovereign after the Conquest. The Monarch was very powerful; he was not absolute; and this leads us to consider the only but the material check to his power, beside the mere force of the wealthy Barons, always more or less a restraint upon the Prince in every feudal Monarchy—I mean, of course, the General Council, whose interposition was always held necessary for the making of laws.

This body had now changed its name, and was called by the Norman term of *Parliament*, in Latin *Colloquium*, instead of the Saxon Witenagemote or Michelgemote. In some sort, too, its composition had undergone a change; but rather in appearance than in reality. The sounder opinion seems to be, that before the Conquest its members were the Prelates and the great allodial proprietors, and that the vassals of the king did not form a part of it. This is certainly the subject of controversy; and they who deny the position have at least to urge in support of their opinion the great importance of the Crown vassals, the powerful tenants in capite, and the likelihood that the King, who alone had the power of summoning the Council, would call these his vassals to assist. But be this as it may, no doubt can exist that after William had, about the twentieth year of his reign, completed the feudalization of the whole kingdom, and converted all the allodial into feudal holdings, the Council was composed of the Bishops, Abbots, and greater Barons, tenants in chief of the Crown, who were re-



quired to attend their Lords' Court or Parliament three times a year, at the great festivals of Christmas, Easter, and Midsummer, as the Gemotes had been held before the Conquest at the same seasons. The numbers who attended the meetings were not great. The whole Barons of the realm were only, according to the most accurate enumeration, 605, of whom 140 were ecclesiastical; but a very large proportion, from their distant residence, never attended the court. The stated meetings were probably occupied chiefly with matters of form and routine, while the important concerns of the kingdom were reserved for occasional meetings, which the Prince summoned when he found that he wanted their aid in his wars, or their assent in making laws, and bringing great offenders to punishment.

It is chiefly from the interposition of these occasional assemblies, whenever matters of importance were to be transacted, that we learn the strength of the Parliament, and can estimate the degree in which the Royal Prerogative was limited by the established Constitution, subject to one remark which I shall find it necessary afterwards to subjoin. Let us mention a few of the principal occasions on which the very imperfect history of our early Constitution has preserved the memory of this parliamentary interference, and we shall be convinced that, though the Conquest consolidated and extended the prerogative, it did not materially break in upon the functions and authority of the Great National Council.

When the Conqueror had nearly matured his plan for feudalizing the kingdom, he assembled a Parliament in London; and the country was divided into Knights' fees, the whole landowners, as well clerical as lay, being obliged to send for each fee, that is, each five hides, or 600 acres of land,\* a Knight equipped for the field to serve during forty days.† This raised a body of 60,000 horse, there being 60,215 Knights' fees, whereof 20,015 were in the hands of the clergy.

One of the most certain occasions of calling a Parliament was the death of the King; when the old form of election was restored; and indeed as all of the Conqueror's successors, except Henry II., that is, William Rufus, Henry I., Stephen, Richard,

\* This is about a fair average; but of course, as the apportionment was by value, there must have been a great difference in the extent, according to the quality of the soil.

† Wilkins, L.L. Sax., 227.

and John, were usurpers upon the rightful heirs, the assent of the Council became a material confirmation of a bad title. Thus William II. was chosen according to his father's dying request, Robert, his elder brother, being set aside. Stephen was crowned without any Parliament, but he convoked soon after a Synod of the Clergy, who assumed to dispose of the Crown. The Empress Maude had been acknowledged Henry's next successor at a Parliament held nine years before his death. On Henry II.'s decease the Queen convoked a Parliament to receive Richard I. and fix his coronation. At his death John held one at Southampton, which gave him the preference over his nephew Arthur, the rightful heir to the Crown.

It is manifest that little or no reliance can be placed upon such appeals to Parliament, as evincing the legal structure of the Constitution; because the power of the great Barons was such as made it necessary for the Sovereign who would succeed upon an infirm title to conciliate as many of them as he could, and no better way presented itself of strengthening a defective claim to the Crown than obtaining the consent of a council composed of those Barons and the heads of the Church. There seems great reason for believing that this also was the main if not the only reason for assembling Parliament when any measure of policy or new law was to be sanctioned; and this is the remark subject to which I before stated the proposition, that appeals to Parliament were evidence of some power existing in the Constitution independent of and even superior to the King's. It is possible that this was rather an expedient to which the King resorted in consequence of the power and wealth vested in the Barons, than an acknowledged and fundamental principle of the Constitution. Nevertheless the appeal to those assemblies on all important occasions, whether executive or legislative, is unquestionable.

When a prince was disposed to make any grant or concession to the people, it seems not to have been held necessary that a Parliament should be summoned. This arose from the original principle of the Anglo-Saxon and Norman legislation. The law was held to be the King's decree; he made it generally on the petition of the Witan, or great lords and prelates; but he might also make it of his own free will, provided it was a concession to the nation, which might be presumed as of course to

meet with their consent. The modern constitution retains this form, but extending it to all cases, as well those in which the prince yields something as those in which he claims something. According to this view of the matter Henry I. promulgated his famous Charter, renewing and confirming the old Saxon laws and those of the Confessor, of which we have no account, unless that of Henry's confirmation. It is a very important statement in this charter that all the alterations made by the Conqueror in Edward's laws are distinctly stated to have been made with the consent of the barons as well as the prelates.

The treaty (1153) between Stephen and Henry II. was ratified in an assembly of Prelates and Barons, who witnessed the charter then granted by Stephen. Stephen held three other councils, in which he agreed to confirm all the rights granted by Henry I. to the nation.

The celebrated Constitutions of Clarendon, by which the clergy were subjected to the jurisdiction of the temporal courts, were made at a parliament attended by thirty-seven barons and eleven counts.\*

In 1191 a Parliament was held against the usurpation of Longchamp, in Richard I.'s absence, and to appoint a council of regency. In 1205 a Parliament at Winchester ordered every tenth knight in the realm to be raised and mounted at the charge of the other nine, as a force to aid in recovering the continental dominions of the Crown, and required every man, on an enemy landing, to rise and serve on pain of perpetual slavery with a heavy poll-tax. This Parliament is said to have been attended by the Prelates, Barons, and "all the faithful people of the King," which last term means only, as we have frequently shown, that the assent of all not summoned was assumed. When, in 1213, John surrendered the kingdom into the hands of the Pope, and agreed to hold it as a fief, doing him homage as his liege lord, a council of the Barons and Pre-

\* It is curious to observe the working of clerical prejudice in an accurate, and, generally speaking, a liberal mind. When Dr. Lingard (l. 386) is mentioning the most important of those provisions, that which makes a clergyman triable for a crime before a civil or temporal judge, he treats it as an innovation upon the rights of the clergy overturning the old law, and only says of it, "however it might have been called for by the exigencies of the time." Can he really mean to affirm that it required any peculiar "exigency of the times" to render a priest amenable for theft, rape, or murder, like the rest of his fellow-subjects?

lates was held, and two Bishops, nine Earls, and three Barons signed the instrument. Nor were the Barons willing to forget this transaction, or indisposed to avail themselves of its disgraceful import when it suited their purpose. Soon after, they appealed to Pope Innocent, as their liege lord, against John, for whom however his Holiness not unnaturally decided.\*

Although it seems to have been understood that all general laws must have the consent of the Parliament, it seems equally clear that the limits of the Royal authority in regard to taxation were very imperfectly defined, especially in the earlier period of the Anglo-Norman monarchy; yet it is not very easy to determine whether the Prince in his exactions was committing an usurpation or only acting according to his prerogative. The Conqueror and his successors, beside their exactions from their vassals in the name of marriage, wardship, and the fines which they levied upon them on many other accounts, also levied tolls at fairs and markets, and on the passage of goods over bridges. No ancient charter granting a right of market with tolls, pickage, and stallage, ever purports to be by consent of Parliament. Customs were also levied on goods imported and exported at the havens of the realm. On towns, especially those in the demesne lands of the Crown, a tallage, in the nature of excise, was levied, and the inhabitants used to offer a composition, which occasionally was refused. The Conqueror, of his own authority, revived the payment of Danegelt, which the Confessor had remitted; and he is said to have raised by such means the incredible sum of nearly 11,000,000*l.* of our money. One of the provisions of Henry I.'s charter was a restriction of the Crown's power of fining. Instead of the culprit being in the King's mercy, as had been the case under his father and brother, that prince restored the Saxon *were gelds*, which ascertained the amount of fine for each offence. He also provided that no new taxes should thenceforth be imposed, and he materially lessened the burthen of the feudal incidents. Yet notwithstanding this charter, the result of the infirmity of his title at the beginning of his reign, his extortions were fully

\* Dr. Lingard, though he does not defend this base transaction, is anxious to extenuate it by all the means in his power. Nor can anything be conceived much more flimsy than the topics he resorts to; for example, that the condition of vassalage was reckoned honourable in those times!

equal to those of his predecessors, although from the Barons making no complaint it is probable that he confined himself to oppressing the inferior classes and the towns. He also kept bishops' sees vacant three and even five years, during which he received all their revenues, and sometimes he seized all a prelate's property at his decease. Canons being made against the marriage of the clergy, he sold at a high price licences to break these. Desiring to raise a large sum, by fining the parochial clergy who had transgressed some canon, and finding this yield very little, he at once and of his own authority raised a general tax upon them, and called it a fine for breach of the canons. It is certain that, with great talents and address, he was one of the most unprincipled and tyrannical princes that ever sate upon the English throne.

The quarrels in which Henry II. was constantly engaged with the Church, probably restrained his violent and cunning nature so far as to prevent him from exciting general odium by interfering with the property of his subjects. But his successor, the favourite theme of all our romance-mongers' praises,\* the gallant Cœur-de-Lion, was the most rapacious prince of his age. His shameless sale of Earldoms for money, and his restoring to the Scots their castles long in the hands of the Crown, for large ransoms to feed his extravagance, as well as his emancipating them from their fealty to the English Sovereign, are acts of as scandalous and as mean profligacy as any which his despicable successor ever committed. The regent, De Burgh, whom he left to scourge the country when he went abroad in 1194, is said to have raised in two years a sum equal to eleven millions of our money at the least. The exactions of this functionary drove the citizens of London to resistance, and Fitzosbert's rebellion was the consequence. The Council of Regency in 1193, for his ransom levied a tax of 20s. on every knight's fee, and 25 per cent. on all income, ecclesiastical as well as lay. They appear to have had no Parliamentary authority for this; although they were named to the Regency by the Parlia-

\* Whoever admires Sir Walter Scott's genius for romance-writing—as who must not?—naturally feels concerned for the failure of his Crusade tales to interest us in Richard. Nothing more unnatural, more upon stilts, more unbearable to read, than the speeches he puts into his hero's mouth, is anywhere to be found; hardly his manufacture of speeches for Elizabeth, and of light conversation for Buckingham and Charles I. about "Sweet Will" (i.e. Shakspeare) and other matters.

ment held in 1191, as has been already stated. Following their example, John, in 1199, soon after his accession, levied a seventh of the income as well as the personalty of his Barons by way of penalty for their having deserted him in his disastrous Norman campaign. In short, with the exception of the Parliament held at Nottingham in 1194, of spiritual and temporal Peers, we see hardly any example of a tax imposed by the National Council. That assembly imposed a tax upon land. The numbers which attended it, however, are a proof how little the principles of the constitution were understood, or the interference of the Parliament valued; only fifteen Peers of both kinds, lay and clerical, were present. It appears that in England as in France, a semblance rather than the reality of general assent to taxes was alone required for their being imposed. The great difference between the two constitutions was that the general laws appear in England always to have been made in the National Assembly or Parliament, while in France the King and his Council did no more than promulgate their edicts to the General Assembly, making sure of its assent, if indeed that assent was ever asked, of which there remains nothing like evidence.

The power of the Crown in respect of the Church formed in these times a very important article of the constitution. In England, as in all other countries since the establishment of Christianity, the Bishops were originally the mere overseers of the clergy, and possessed of no temporal wealth or power under a religion of which poverty was the chief characteristic; and they were chosen partly by the clergy, and partly by their lay flock, as we have seen in the first part of this work (Ch. XI., XVI.). But in proportion as their importance increased, the Church showed a desire to exclude the laity from interfering in the choice, making a decree in the Council of Constantinople, 869, against all lay votes at elections, and also against the Chapters receiving any royal nomination. At the same time the sovereigns evinced an equal disposition to interfere with their choice of prelates. Sometimes they accomplished, by main force, their purpose of directing the election; more frequently by influence. In Spain alone was the power of appointment vested directly in the sovereign, by a grant of Urban II., in 1088. In France, although the princes of the two first races assumed the nomination, they afterwards yielded it, at least nominally, to the clergy.

In England the right of the Chapters was not denied ; but then the King claimed two important privileges ; he insisted upon his licence to elect being necessary before the Chapters could proceed, which gave him the previous power of recommending whom he pleased, and he then required the presentment of the prelate when chosen for his confirmation or acceptance, which gave him a veto on the election in the last stage. The monasteries in some cases claimed the right to the exclusion of the secular clergy, a claim admitted by even the stoutest advocates of the Romish Church to be wholly preposterous. The quarrel between John and the See of Rome began from the monks of Christ Church claiming to elect the Archbishop of Canterbury, and the Pope allowing this claim upon an appeal to him by all parties. The Anglo-Norman Kings may be said substantially to have directed the choice of all their prelates, though not to have directly named them. On particular occasions they made their appeal to the Great Council of the Barons, or Parliament, as when William the Conqueror appointed Lanfranc in 1070, by consent, it was said, of the Barons, probably because he was a foreigner, being a native of Pavia. The Barons appear occasionally to have interfered in this matter without being consulted, for we are told that they combined against Guitmond, to whom the King had offered an English see, which he refused on the ground that the King had no right to impose superiors on the clergy ; and this answer was said to have been so distasteful to the Barons, that they drove him from Normandy after preventing him from being raised to the See of Rouen.

The only instance in which the Anglo-Norman Kings lost any of the Prerogatives which those of the Saxon times had possessed, was on the Earldoms becoming hereditary, as in Normandy, instead of being, as formerly, conferred for life only. This difference was probably more in name than in substance ; for the Earl's son must generally have been so much more powerful than the rest of the Barons in the district as to ensure his nomination upon his father's decease. But, even were it otherwise, we may easily perceive that, with such influence over the clergy, with the direct power of appointing to all judicial and other executive offices, with their exorbitant landed property, and their numerous retainers, to say nothing of their privilege of interfering with the course of justice and with property by its

administration, they must have possessed a power so extensive as to reduce the privileges of the subject within narrow limits.

There are two tests of the extent to which Royal prerogative is enjoyed in any community. The one is the power of making, or concurring in making, the laws by which the state is governed ; the other is the power of ruling arbitrarily, so as to set at defiance any laws which may nominally exist for the government of the state. The former in theory may appear to occupy a larger space, because the legislative in truth means the supreme power in every country. But the force of the law itself, and consequently the value of the legislative authority, is truly tested by the latter circumstance, inasmuch as the silence of the law before the Monarch sets him above it, and if all his other attributes enable him to defy it, there is but little lost to him in having no power to change its provisions. Practically he may be absolute, though forming part of a constitution theoretically limited ; not to mention that if the existing laws do not interpose obstacles to his tyranny, it signifies very little that he should be unable of his own mere authority to change them by new enactments.

If we apply these principles to the prerogative of the Anglo-Norman Crown, we shall find little reason for believing it to have been of a very limited nature. The Princes who reigned from the Conquest to the granting of the Great Charter were, in the strictest sense of the word, tyrants ; and Stephen, were he excepted from this description, owed his curbed authority to the constant rebellion of his Barons, and his disputed succession to the Crown, which filled his reign with anarchy, and covered the country with desolation. These Princes not only displayed the fiercer disposition of tyrants, with the caprice of their ungovernable humours, but they were constantly gratifying their arbitrary or cruel propensities at the expense of their subjects, and without exciting resistance or suffering restraint. The Conqueror, not content with possessing sixty-eight forests, with other old parks and rights of free chase for the amusement of hunting, to which, like all his race, he was passionately addicted, threw into a New Forest (the name it still bears) great part of the fine county of Hants, thirty miles square in extent. This operation was repeated in other districts by his sons and grandsons, and it implied the destruction of all the property within



the district thus seized, the razing houses and cottages to the ground, the throwing lands out of tillage, the expulsion, and often the destruction, of the inhabitants. A promise to abstain from such waste was frequently made by these Princes when they had any point to gain, as to excite a spirit of hostility to the refractory Barons; and it was as often broken as made. At length the Charter of the Forest was extorted from John; its effect was to disafforest all that had been thus wasted since Henry II.'s time, and it prevented the future spread of this intolerable mischief. These Princes often prohibited under severe penalties any person from hunting on his own domains, or granted to one the exclusive right of chase over another's property, a right not yet wholly extinguished in all parts of the island.\*

But the worst of the Conqueror's crimes remains to be told, and the one which most strikingly proves under how little restraint the caprice and the cruelty of the Norman Princes were placed by the Constitution, how much soever they may have been occasionally thwarted by their Nobles, barbarians as cruel, as overbearing, and as lawless as themselves. He resolved to draw a zone of desolation—a desert country—between his dominions and the northern tribes, who had given him trouble by their incursions; and accordingly he dispersed over the northern counties bands of soldiery, with orders to burn, sack, and ravage the land, sparing neither man nor beast. The whole country between York and Durham was thus laid waste; upwards of 100,000 persons of all ages and both sexes, not enemies but subjects, were slain; and a century afterwards the traces of this awful devastation were discernible on the whole of that road for above seventy miles. When we hear of Eastern Despots we must confess that they would be greatly slandered by any comparison of the Norman king's conduct with theirs. No instance is on record of any Oriental Prince ever thus treating the territory and the people subject to his dominion; their ravages are confined to hostile countries and inimical nations.

William Rufus passed his short reign in the unbridled gratification of his voluptuous passions and his cruel disposition; butchering prisoners with his own hand; laying waste districts

\* The maxim in William's time was—"Whoso shall slay hart or hind, men shall him blind."

to extend his parks ; putting out the eyes of his captives when they were of rank—an Oriental cruelty, in which all the Anglo-Norman Kings indulged. It was his encomium on his rapacious minister, Ralph Flambard (the devouring torch), that to please a master he would brave the vengeance of all mankind ; and his exactions were so intolerable, that the blow which deprived William of life was supposed to have been directed by private revenge.

Henry I., the scholar, as flattering historians have named him, when alarmed by the resistance of his Barons, pursued a policy the most profligate and tyrannical ever known in modern times ; he employed all the energies of the law and the services of corrupt judges to entrap and convict great landowners, whose forfeited estates on their attainder he bestowed on men of the basest extraction and most abandoned lives. Outlaws themselves for infamous offences, they thus became suddenly possessed of immense wealth, and formed a trusty body of allies against the old Barons of the realm. His dissimulation was proverbial ; his violent temper bespoke him the son of William ; his dungeons were crowded with victims ; and, at his death, there was found his cousin, the Earl of Mortoil, who had long been in the dungeon, and had likewise been deprived of sight. Barrè, a troubadour poet and knight, prisoner of war, was ordered by him, in revenge of a satire he had written, to lose his eyes, notwithstanding the remonstrance of the Earl of Flanders, who was against a proceeding as cowardly as it was against the laws of chivalry and war. Henry persisted, and the unhappy victim dashed out his brains in a paroxysm of grief and indignation.

The passion of the chase was not merely shown by the Anglo-Norman Princes in laying the country waste to extend their forests ; they established a code of forest laws the most cruel and barbarous of any known among men pretending to the least degree of civilization. All within the forest precincts, and all who dwelt on the borders, were subject to this sanguinary code. It punished the slightest of the innumerable offences which it denounced against the game and the timber, with mutilation, loss of limb, and loss of sight. Henry II. had, at the commencement of his reign, when his crown was doubtful, substituted for these punishments the more merciful penalty of fine and imprisonment ; but as his authority became better established he

restored the old and savage inflictions. His rapacity yielded to no Prince's since the Conquest; justice was openly bought and sold during his long reign, and instances are not wanting of his taking money from one party to accelerate the decision of a suit after having been bribed to retard it by the other. That he was the best of William's successors may easily be admitted, without bestowing upon his memory any great praise; but when Hume represents his character as "almost without a blemish;" and adds, that it "extremely resembled that of his grandfather Henry I.," we are naturally led both to reflect on the sanguinary forest laws revived by the one Prince after he had yielded to the voice of nature in their repeal, and on the corrupt administration of justice, as well as on the barbarous cruelty of the other, in which he had not been surpassed by any sovereign who ever filled the English throne. As for Richard, Hume himself, with all the "childish love for kings" which Mr. Fox so justly imputes to him, has confessed that he was cruel, haughty, tyrannical, and rapacious; and indeed his courage appears to have been his only redeeming quality.

I apprehend, therefore, that the exercise of such tyrannous acts as we thus find to have signalized the Anglo-Norman reigns, and without ever producing resistance from the subject, much less remonstrance from the Parliament, demonstrates the extent of the Royal authority and the feeble restraints imposed upon it by the constitution. Provided the King only called his Barons together upon great occurrences, to confer with them touching measures of peace and war, or to obtain their assent to new laws, it should seem that he was at liberty to act as he pleased; that the administration of justice afforded no protection to the people; and that the privileges of the Parliament afforded no real check to the caprices, or the cruelty, or even the rapacity of the Prince.

It is quite certain that although in England there was at all times a legislature, of which the King formed only one portion, and though the foundations were then laid from the most remote antiquity for the free government which was gradually raised upon them, yet as far as regards the actual power of the Sovereign it was fully as great to all practical purposes, and that the rights and liberties of the people were fully as contracted, as in the neighbouring kingdoms of France and Germany. Indeed

the Baronial power, which formed the principal counterpoise in practice to the exercise of the Royal prerogative, was unquestionably more curbed and subdued in England than in the monarchies of the Continent. There can be no creation of national vanity more groundless than the notions which represent our ancestors as enjoying more freedom, and their princes as holding a more limited authority, than was known in the feudal monarchies of the neighbouring nations.

## CHAPTER XXIV.

GOVERNMENT OF ENGLAND—FOUNDATION OF ITS PRESENT  
CONSTITUTION.

Four essential requisites of limited Monarchy—Error of supposing nominal privileges real—Causes of the resistance to John—Great Charter—Forest Charter—Broken by John—Civil War—French aid called in—Henry III.—Pembroke Regent—Confirmations of the Charters—Mad Parliament—King deposed—Simon de Montford—His Parliament with Borough Members—Edward I.—Earls Bohun and Bigod—Statute against Taxing by the Crown—Parliamentary Constitution fully established in Law—Merits of Cardinal Langton—Compared with Archbishop Winchelsey—Errors of Romish Historians—Edward I.'s Legislation—His Wars.

THE history of our ancient Constitution, as far as we have now traced it, appears very fully to prove one material proposition respecting its structure. The mere existence of a legislative body independent of the Sovereign, though endowed with the right to share in the making of all laws, and though even admitted to the occasional privilege of being consulted upon extraordinary emergencies, whether of war or of finance, did not of itself secure the freedom of the country, or fix limits to the exercise of the Royal authority.

In order to attain these great objects of all free government, it is absolutely necessary *first* of all that the national assembly should be composed of persons entitled to sit in it of their own right, or by some other title than a Royal summons, which may be withheld at pleasure. But it is equally essential, in the *second* place, that it should be summoned regularly, or that the Royal authority should be so circumstanced, the Sovereign so situated, as to make his calling the members together a matter of necessity. *Thirdly*, even if they are secure of meeting, unless their assent be required to all measures of importance, and the Sovereign be held bound by the laws of the realm, no effectual check can be provided to his arbitrary power. *Lastly*, unless the members, of one at least of the assemblies, owe their seats in that assembly to the voice of the community at large, or are

taken from the body of that community, and so have the same interest with their fellows, the security of the public interests and liberties must be altogether imperfect; the Crown may be limited in its power; the Parliament may be clothed with important privileges; many of the greatest abuses may be prevented, considerable assurances of the general good being the guide of the government in its administration may be obtained; but nothing can prevent the machine from working with a bias towards the interests of particular classes in the community, those classes composing the assembly, because the deliberations of that body must lean towards the interests of those who form its members.

It is necessary to keep these fundamental principles constantly in view while considering the ancient structure of the English Government, else we shall surely be deceived by the mere name of a Parliament, and fancy that because there was always in England a National Council, there was always a free Constitution. There cannot be a greater mistake. When William laid waste Hampshire for a hunting ground, Yorkshire and Durham for a security to his conquests—when his successors each in his turn imitated his example as far as their pleasures were concerned—when they imprisoned in English or in Norman dungeons those grandees who had offended them, and put out their eyes like Persian or Egyptian Sultans—when they proclaimed the life of a man and of a stag of equal value, and mutilated the peasant who presumed to kill the deer or the hare that had trespassed on his corn-fields—those tyrants, thus well earning the character given by the Chronicles, “that while the rich moaned and the poor murmured, all must follow the King’s will who would have either lands or goods,” yet could none of them make any law without calling together a Parliament in order to obtain the assent of the Prelates and the Barons. No more clear proof surely needs be given of their thoughtless folly who, in the zeal of party or the overflowing of national vanity, scruple not to affirm that the English have in all ages enjoyed a free because a Parliamentary Constitution.

The four great requisites of a real and effectual Parliamentary government—independent right of the members to sit, security for meeting regularly, necessity of being consulted, and general representation—were only obtained by our ancestors in the long

course of ages, during which the Constitution became gradually more and more perfect. The foundations of the whole, however, were laid at a very early period, when the Barons came in conflict with the violence of the King, and when they found that the most effectual way of resisting his encroachments and securing their own rights, was not by making war upon him, but by securing the calling them to the national assembly, of which they formed the most important part as regarded influence in the country, although less important than the clergy in point of personal weight and authority. This first step was made in the reign of John, and others of almost equal importance were at the same time partially made.

The immediate cause of the quarrel between John and his Barons is extremely immaterial. From the beginning of his reign he had fallen into general contempt, by the feeble conduct which lost Normandy to the Crown; and the Barons resisted all his attempts to make them aid him in recovering it. For their disaffection he had rapaciously levied large sums, as we have seen (Chap. XXIII.), the seventh, it is said, of their personal property, under pretence of punishing their misconduct. The cruel murder of his nephew Prince Arthur impressed men's minds with the greatest abhorrence of him; and his general conduct was that of a profligate, a cowardly, and a blood-thirsty tyrant. An association of the Barons was formed, and they held a council at St. Alban's in 1214, under the Justiciary, when, without the King's concurrence, they republished the Charter of Henry I., and threatened the King's officers with death if they in any way exceeded the bounds of their lawful authority. Soon after a second Council was held by them at St. Paul's, in London, and an oath taken to stand by one another with their lives and fortunes until redress should be obtained. After fruitless attempts to divide their league, John was next summer compelled to yield their demands by granting both the general or Great Charter and that of the Forest, hardly of less practical importance than the former.

The Barons had found it necessary, in carrying on their long struggle against the tyrant, to take measures for conciliating the people and securing their support in case matters were pushed to the extremity of a civil war. Hence the same concessions which they demanded from the King to his vassals, they them-

selves made on their parts to their own; and the feudal oppressions were thus mitigated both to themselves as tenants in chief of the Crown and to their sub-tenants. The King and the other feudal lords were restricted in their demands of aid from their vassals to the three cases of knighting their eldest son, marrying their eldest daughter, and ransoming their person if taken in war; all other aids must have the consent of Parliament. The King's ministers were deprived of all the jurisdiction by which they had previously levied fines arbitrarily for offences in order to fill the Royal coffers. His officers were no longer permitted to take provisions for his use on his progresses through the country, termed *purveyance*. Justice was declared to be no longer within the King's breast to deny, or delay, or sell it to the highest bidder, as Henry II. had so shamelessly done. Judges were henceforth to go the circuit all over the country at stated times. It was expressly provided that no free man should be imprisoned, or his goods seized, unless upon conviction by a jury of his peers, according to the law of the land. But the most important provision in the Great Charter, as regards the form of the government, related to the summoning of Parliament. The clause which prohibited the raising of aids without the consent of a Council, required it to be composed of Archbishops, Bishops, Abbots, Earls, and greater Barons, all of whom were to be summoned individually by the King's writ, and of the other tenants *in capite* of the Crown, who were to be summoned in the mass by the sheriffs of counties. The notice of forty days was to be given them, and the subject-matter of their deliberations was to be stated in the summons. It is remarkable that this important clause formed no part of the original demand of the Barons; and that it was omitted in the charter subsequently granted by Henry III. There seems reasonable ground for suspecting that the Barons little valued this provision; they were obliged to attend the King's court as a burthen incident to their feudal tenure; and the principal object in the clause was to declare that those who neglected to attend should, if the Parliament were duly summoned, be bound, though absent, by the determinations of those who were present at any council. It must be further observed that this provision refers exclusively to one species of council, that which should be held for the granting of an



aid or supply to the Crown. But, on the other hand, the insertion of the provision sufficiently proves the greater attention which was now paid to the subject of taxation. We have seen in the last Chapter how irregularly the power of levying money was exercised, and how seldom the Norman Princes resorted to Parliament for their extraordinary supplies. The loss of many landed possessions, especially during the civil wars of Stephen and Maude, and the loss by John of the Norman dominions, had now so far impoverished the Crown that recourse was more frequently had than formerly to the levying of extraordinary aids; and hence the care taken to make this provision in the Charter.

It is a further and important proof of the progress which the towns and ports had made in wealth, that their privileges and liberties are guaranteed by a specific clause; so that the power hitherto exercised of levying tolls and customs upon the markets and upon imports could no longer be lawfully used by the King.

The Forest Charter declared that all the land taken in to form parts of Royal forests, since John's accession, should be thrown open, and that twelve Knights should be chosen in each county court to inquire into forest abuses, and abolish all illegal customs which had been introduced, as well as to examine the conduct of the sheriffs and inferior officers of the Crown.

In order to secure the execution of the Great Charter, an extraordinary step was taken. Not only the Tower of London was delivered into the hands of the Barons for two months; but twenty-five of their number were chosen, without any limitation of time, as Conservators of the Privileges of the Realm, authorized, upon a complaint made, to admonish the King, and empowered, if redress were refused, to levy war against him. All persons were required to swear obedience to them, and, in fact, the executive power was entrusted to their hands. Nothing can more clearly show that the whole proceeding was of a revolutionary character; and, accordingly, John no sooner saw the Barons disperse than he collected his troops, ravaged the whole country, and, finding no resistance from the League, would have entirely effaced all recollection of his submission at Runnymede, had not the Barons, unable to cope with him, called in Louis, the French King's son, and delivered over the crown to him, in the defence of which he was engaged when the death of John and the able administration of the Regent Pembroke enabled

the Barons to defeat him, and to restore the independence of the kingdom.

The first step taken by the Regent, when preparing for this important operation, was to assemble a Great Council or Parliament, which was attended by all the Prelates and Abbots, some Barons, and many Knights. The Great Charter was renewed and confirmed with some omissions, among others that of the clause authorizing resistance, that respecting the summons to Parliament, and that respecting the forest abuses. But those provisions were expressly reserved for further consideration in a full assembly. Another confirmation of the Charter was given soon after. Many years later Henry called a Parliament to grant him an aid, which was at first refused, but afterwards given, on the ground of a threatened invasion from France. The assembly granted a fifteenth of personal property, but made the ratification of both the Charters an express condition of the grant. Notwithstanding the two former confirmations, little effect was given to the provisions of those Charters by the King's officers. They were since renewed no less than five-and-thirty times in the reign of the Plantagenet Kings down to Henry VI.; and always in the same form which they assumed in the 9th of Henry III. This Prince was ever in want of money, and he confirmed the two Charters in all six times; once or twice he was compelled to swear that he would observe them religiously.

The misfortunes which afterwards befel him are well known. In 1258 a Parliament called by him at Westminster was attended by the Barons, who assembled in armour, and, requiring redress of their grievances, compelled him to deliver over the greater part of the Royal prerogatives to a commission of lay and clerical peers, who should be named in a Parliament speedily to be holden at Oxford. This, which is known by the name of the "*Mad Parliament*," virtually deposed the King, vested the representation in twelve persons, and appointed Parliaments to be held three times every year. The victory of Simon de Montfort at the Battle of Lincoln led to his usurping the Royal authority; and, in 1264, he assembled such a Parliament as he considered would be favourable to his views. The writs of summons ran not only to Prelates, Abbots, and Barons, such being selected as were known to favour him; but four Knights were called to

be elected in the court of each county, and two deputies from each city and borough town. The lesser Barons and free tenants had in all probability for some time before been in the practice of sending two or four of their own number to attend the Council, and save the whole freeholders the trouble and expense of attendance; but it seems certain that this was the first occasion in which the towns sent representatives. I have entered so much at large into this controverted question in the Seventh Chapter of this Third Part, that there needs no further discussion of it here. But we may observe, that, although the origin of our burgh representation seems thus to be fixed, we are altogether in the dark as to the mode in which the representatives were chosen. The freeholders chose their representatives at the county court; we know not how the townfolk chose theirs.

In the Chapter just referred to I had occasion to trace the early history of the Parliament thus for the first time composed as it has ever since been. It appears that during the whole of Edward I.'s reign, till towards the latter end, though the cities and towns were summoned, yet their members did not attend regularly unless when the question of taxes upon these places arose. This seems to be the result of the best examination which I have been able to give the Statutes and the Writs. The towns which had the earliest writ of summons were those in all probability of the Royal demesne, they being in the nature of tenants in chief of the Crown. For the details of the question regarding the origin of the representation, and for the early history and the peculiarities of the Scotch Parliament, the reader is referred to the Seventh Chapter, in which it appeared, for the reason there assigned, necessary to anticipate a portion of the subject, belonging naturally to the present discussion.

The most important step which was made in those times towards the establishment of a Parliamentary constitution, was the concession extorted from Edward I. towards the close of his reign. We have seen that the clause in King John's Great Charter, forbidding the Crown to levy any aid not granted by Parliament, was immediately afterwards struck out of the confirmations granted in Henry III.'s time; and greater oppressions than ever were practised in levying taxes upon the people. The revenues of the Crown from land were much diminished; the

numbers of men liable to military service had also greatly decreased from the negligence of the mustering officers; and the turbulence of the feudal militia rendering the sovereign unwilling to employ them, he had recourse to hiring mercenaries, or bargaining with the Barons for paid forces. A great necessity for supplies was thus experienced by Edward in the course of the constant wars which he waged in Wales, in Scotland, and in France. To obtain these supplies he had frequent recourse to Parliament. In the first thirty-four years of his reign he had twelve times assembled that body for this purpose, and obtained twenty-one grants from the laity and five from the clergy. The former amounted in all to nearly the whole personal property in the kingdom; the latter did not fall much short of a whole year's income of the Church. Yet still his wants were pressing, and he had recourse to the most violent means for supplying them as often as the Parliament refused the aids which he required. He occasionally levied tallages, or a per centage, on all personal property, of his own authority. All his predecessors had maintained their right to do so. John had sent itinerant justices round the counties for the purpose of swearing the bailiffs of all the landowners to the amount of their goods and rents. Henry III. had caused the same inquisition to be performed by four knights in each county, these commissioners being chosen by the justices. They swore each person to the amount of his own and the personal property of his two next neighbours; and a jury of twelve men was to decide if the amount thus given in was disputed. Edward likewise sent out commissioners round the country to ascertain and levy the amount of tallage, as well that granted by Parliament as that which he imposed, more rarely, of his own authority; and the oppression and corruption of these officers was a cruel grievance to the people. But when he found a difficulty with the Parliament he did not confine himself to exacting tallage after the manner of his predecessors; his expeditions made other supplies necessary; and, fortunately for the liberties of the country, he had recourse to means which proved still more vexatious, till the evil worked its own cure. He raised, arbitrarily, the duties on exported wool, and forced the merchants to give him a loan equal to the whole value of the quantity shipped by them, and he more than once seized all their wool and hides, and sold them for his own use. He equally assailed the landowners,

seizing their live stock, and issuing orders to the sheriffs to collect both provisions and grain for his army. A spirit of resistance was excited by these violent encroachments unequalled even in the worst times of his predecessors, and the Barons under Bohun and Bigod so far intimidated the officers as to stop the purveyances which the King had ordered. Edward was alarmed by the proceedings of the two earls, made his peace with the clergy, gained over the citizens of London by a flattering speech, and sailed for the Continent. But he soon ordered a large levy to be made on the clergy, and thus united them with the people in support of the earls. The council appointed to assist the Prince of Wales in the regency took the same course, and Edward was compelled most reluctantly to grant a solemn confirmation of the two Charters, with this important addition, that no aid or tallage should thenceforth be raised, unless by the assent of Parliament—that is, of the Prelates, Barons, Knights, and Burgesses of the realm; that no seizure of wool, hides, or other goods should be made by the Crown, nor any toll taken upon them; that all customs and penalties contrary to the Charter and to this additional article should be void; that the Charter so amended should be read twice a year in all cathedrals; and that all persons acting against it should be excommunicated.

Edward endeavoured soon after to evade the force of the obligation thus solemnly contracted; and added a clause, saving all the Crown's rights. This, when proclaimed, excited so great a clamour in the city of London, that he again became alarmed, and gave his unqualified retraction of the clause. The year after, 1300, complaint being made in Parliament that the Charters remained unexecuted, he was obliged to grant an additional article, that the Charter should be read four times a year in all the sheriffs' courts, and that three knights in each county should be chosen by the freeholders, with power from the King, to punish summarily all offences not otherwise provided for against the Charters. In the course of two or three years, however, he openly violated the new law thus made, levying tallage and poll-tax without resistance. He also appealed to the Pope to be absolved from the obligations which he had contracted; but though he obtained a rescript declaring all his concessions void, as it artfully contrived to state the supposition that they had been contrary to the lawful rights of the Crown and saving to the sub-

jects their ancient rights, he never ventured to use it; so that at his death, two years after, he left the famous statute prohibiting all taxation without the consent of Parliament, as the established law of the land.

Although we should admit that the provisions in the Charter, thus confirmed for the tenth time, and the important additions made to it, were but imperfectly kept, that they were so often violated as to require constant renewals with repeated pledges, no less indeed than fifteen times in the next reign but one, it is nevertheless certain that a prodigious advantage was gained to Constitutional Government and popular rights by the nation having the text of a treaty to cite, the provisions of a law solemnly made in writing and universally known to rely upon in their disputes with the Crown. The Prince who now levied money without the consent of Parliament, or who assembled a few dependent Barons and Burgesses instead of the whole Lords and Commons, acted avowedly and openly an illegal part, and plainly violated a known, established, and fundamental law of the land. It might depend upon the temper of his subjects at the moment, upon the force at his command, upon his success in courting and gaining one class of men to side with him against the rest, upon the courage and patriotism of the Parliamentary and popular leaders, above all upon his own personal endowments, and his credit with the country for an able and successful administration of its affairs, whether he should be suffered to break the law with impunity,—whether he had to dread resistance to his oppressive acts,—and consequently it would naturally depend on all these circumstances whether or not he should venture upon so unlawful a course. But there can be no doubt that he was sure to be often restrained in making the attempt, sometimes opposed when he made it, and occasionally punished when he ventured so far. The most important part of the new law of Edward was the renewal of the provisions originally inserted nearly a century before, and immediately afterwards left out, with the more precise recognition of the power of Parliament, and the important addition of the County and Burgh representation. From this period we may truly say that the Constitution of Parliament, as now established, took its origin; and however that body may have occasionally had to struggle for its privileges, how often soever it may have

submitted unworthily to oppression, how little soever it may have shown a determination to resist cruelty and injustice, and even a disposition to become the accomplice in such acts, we must allow that, generally speaking, it has, ever since the end of the thirteenth century, formed a substantive and effective part of the Constitution, and that the monarchy then assumed the mixed form which it now wears. The great outline was then drawn; the details and shades and tints have since been filled in.

The English nation ought piously to hold in veneration the memory of those gallant and virtuous men who thus laid the foundations of a Constitution to which they are so justly attached. The conduct of the Barons in John's reign is indeed above all praise, because it was marked by as much moderation and wisdom as firmness of purpose and contempt of personal danger. They had no sooner held their Council at St. Albans, and proclaimed the Charter of Henry I., than the tyrant, landing with his foreign troops, marched to lay their estates under military execution, and take signal vengeance on their persons. Cardinal Langton, the Primate, who, though forced on the kingdom by papal domination, had ever shown himself a true patriot, stayed his progress by his peremptory remonstrances, and by his threat of excommunicating all who should engage in such a warfare, while the legal course of bringing offenders to trial was open to the Crown. He afterwards encouraged the Barons, at the Council of St. Paul's, to insist on Henry's Charter, and excited them by his persuasive eloquence to take the famous oath, which he solemnly administered to them, that they would die sooner than depart from this demand. He had already compelled John to promise the same Charter, then termed the Confessor's Laws, as the condition of reversing his excommunication. Once more, in the assembly of Bury St. Edmunds, he influenced them by his eloquence, and they took their oath at the altar, to make endless war on the King until he granted their demands. Nay, when John, in order to gain over the clergy, as a last expedient granted them a charter, abandoning all right of interfering with the choice of Bishops, and declaring that their election, though not confirmed by him, should still be valid, promising, moreover, to lead an army to Palestine, and taking the cross himself as a pledge of his pious resolution, the

Primate was so little to be moved from his principles, or duped by such tricks, that he adhered to the party of the Barons throughout, only so far gained the King as to make himself the bearer of propositions for their consideration, and, when the Pope had commanded him to yield, positively refused to excommunicate them, according to the papal threats, but threatened to excommunicate John's foreign troops unless they were instantly disbanded.\*

But as the Pope's whole conduct in this important affair was wholly unjustifiable, and indeed despicable, and as his successor in Edward's time had no share in the resistance offered by the Barons, the Romish advocates are fain to claim for their Church a share not only in the proceedings which extorted the Great Charter from John, but also in those which rendered it effectual to its purpose under Edward. Accordingly, Dr. Lingard, while he places Langton on a level with the Barons of Runnimede, pronounces Archbishop Winchelsey the author, with the two earls, Norfolk and Hereford, of the great change in 1297. Nothing can be more absurd. He wholly overlooks Langton's great praise, of having alike opposed the encroachments of Rome and of the domestic tyrant, of having faced the indignation of the Vatican, refused to execute its menaces, and used its thunder against John and his foreign mercenaries—of having shown so noble a disregard of his order and its interests, that the bribe of the January charter fell as powerless before him as the threats both of Innocent and his vassal. Winchelsey, on the contrary, was ever in league with Boniface VIII., obtained from him the bull against lay encroachments, took up his position in defence of the Church revenues behind that bulwark, was melted by Edward's speech and tears at Westminster, as much as the mere mob, to whom the crafty Prince appealed

\* I feel assured that this is the correct view of Langton's conduct, notwithstanding the suspicion that may be supposed to rest on it from his having been employed by John after his Charter of the 15th of July in favour of the Church. It is certainly true that the Primate was tendered with the Bishop of Ely and Earl of Pembroke as his security to the Barons for his promise in January to give them an answer at Easter to their demands. He was also joined in the mission to the Earls of Pembroke and Warrenne in April. But his refusal to excommunicate them, his threats of excommunicating the foreign troops, and the Pope's letter in March, insinuating that he fomented the dispute, seem decisive in his favour; not to mention that his suspension from his see by John continued to the end of that tyrant's reign.



against his Barons, and was evidently disarmed by the order immediately after issued in imitation of John's early Charter, so utterly scorned by Langton, to protect the clergy in the enjoyment of all their possessions, and Edward immediately took him into favour, appointing him one of the young Prince's tutors and Council as Regent in his absence. His conduct in this office has been extolled. But to what did it amount? On the Barons refusing to attend the Council's summons to Parliament unless the gates of London were given up to their keeping, Winchelsey advised that this requisition should be complied with, clearly against his duty as the Regent's chief councillor. He appears throughout to have acted an interested part, prompted solely by a regard for the interests of his order; and the whole merit of the great change which we have been contemplating belongs to the Barons, the merchants and their leaders, Bohun of Hereford, and Bigod of Norfolk.\* The clergy all behaved like their Primate. Edward's concessions won them over to his side, and they left the barons and the people. On his sailing he, forgetting these concessions, ordered a heavy tallage to be levied upon their personal property; straightway they left him, and once more took part with the country.

While Edward has justly obtained the highest praise from lawyers for the great improvements which he introduced into our jurisprudence, we may remark that the two great changes which he made in the law were pointed in directions not merely different, but diametrically opposite. The power of the Barons and of all landed proprietors was exceedingly increased by the famous statute *de Donis*, which allowed them to entail their real property, and thus to sustain the landed aristocracy. But the restraints upon alienations to the Church by the laws of mortmain tended exceedingly to restrain the power of the spiritual Barons, though they might also give some additional protection to the lay aristocracy.

\* The answer of the latter to Edward, when ordered to follow him abroad as commander-in-chief, is well known. "By the eternal God, Sir Earl, you either go or hang."—"By the eternal God, Sir King, I neither go nor hang." The Primate and his Clergy were contented with a lower tone. They begged the Commissioners sent by the King to represent that they had a spiritual head as well as a temporal, and must first have his leave to pay their money—adding, "We dare not speak to the King ourselves."

The conquests of Edward had no sensible tendency to increase the power of the Crown. Scotland was a source of expense and of weakness. Wales was a still greater diversion to his forces, without producing the least return either in men or money. On the Continent he was generally unsuccessful, and he found the expense and defence of his dominions there fully equal to any benefit they ever yielded him.

## CHAPTER XXV.

## GOVERNMENT OF ENGLAND—THE PLANTAGENETS.

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Edward II.—The Ordinances—Virtual Deposition of the King—His actual Deposition—Edward III.—His Encroachments—Checked by Parliament—Right of levying Men—Restrictions on it—Parliamentary Elections and Procedure more obscure—County and Borough Elections—Composition of the Lords' House—Of the Commons—Places of meeting—Powers of the Houses severally—Partial Parliaments summoned by the Crown—Procedure—Triers; Petitions; Bills—Preparing of Statutes—Mode of executing them—Vacation Committee—Richard II.—Revolutionary times—Henry IV.—Henry V.—Progress of the Commons under the Lancastrian Princes—Henry VI.—Progress of Parliamentary Privilege—Base conduct of the Plantagenet Parliaments—Richard III.—Henry VII.—Decline of Baronial Power.

THE more regular establishment of the Parliament, and the more full recognition of its privileges, was plainly to be seen in the events of the next reign. Edward, on his death-bed, had extorted a promise from his son that he would never allow his unpopular favourite, Piers Gaveston, to return from banishment without the Parliament's leave. That body made the favourite's return without their assent the ground of hostile proceedings against him, and his perpetual exile was made one of the conditions annexed to their first grant of a subsidy to Edward II. The annexing as a condition the redress of public grievances was now the course taken by them as a natural consequence of their acknowledged power to give or to withhold supplies. But a short time, however, elapsed before all regular and constitutional government was at an end, the Barons having, by an armed demonstration, compelled the King to allow the appointment of a Commission, called the *Ordinances*, consisting of Prelates and Barons empowered to prepare new Ordinances for the redress of grievances. Their proceedings agreed to by the King in Parliament nearly resembled those of the Mad Parliament in Henry III.'s reign; as their authority was plainly modelled upon that of the Committee of Barons then appointed. Some of their Ordinances were valuable improvements, especially that regulating the choice of sheriffs; abolishing all but the ancient purveyances, and repeal-

ing the new and oppressive taxes on wool and other merchandize. One clearly resembled the Mad Parliament's law, that three parliaments should be held yearly. The Ordinances required "one to be held each year, or oftener if need be." Another also resembled the former precedent, for it transferred the whole functions of the Crown to the Parliament. The King was bound to obtain the consent of the Barons before he could either levy war or quit the realm; and the Regent, in his absence, was to be chosen by the Parliament, whose advice and consent was also made necessary to the appointment of all the great officers of state and governors of the foreign possessions of the Crown.

The other transactions of Edward II.'s reign are immaterial to our present purpose, but throughout the whole of it there prevailed the assumption that no matter of great importance could be transacted without the presence, interference, and sanction of Parliament. Nor is there any part of the Constitution practically of more importance than the recognition of this principle. The King's deposition was effected by a Parliament which the Queen and her paramour, Mortimer, summoned at Westminster, in the name of the King, by means of the Prince, whom the Prelates and Barons in their interest had named guardian of the realm, or Regent. The Parliament also passed an act of indemnity for all offences committed during the revolutionary crisis, and appointed a Council of Regency, the young sovereign being only fifteen years of age.

The weakness of the Crown in the second Edward's reign had prevented all violent measures for raising supplies by the Royal authority alone. But his son, whose wars occasioned a great increase of expenditure, was frequently induced to exert the prerogative which, like his grandfather, he always asserted, and which he maintained that the famous statute of 1297 had not validly abridged. He contended that he had the right to impose tallage "in cases of public emergency, and for reasonable cause;" nor would he even so far yield to the representations of the Commons as to declare such imposts illegal, always adding a saving clause for these extraordinary occasions. He several times, in defiance of the statute "*De Tallagio non Concedendo*," levied a tallage of his mere authority. He did so in 1338, at the beginning of the war which led to his great naval victory of Blakenberg; and moreover had recourse to forced loans, and to

seizures of all the tin and wool of the year, the *Maletolte* of his grandfather. Nevertheless the war was extremely popular with both Lords and Commons; both urged him to prosecute it, and were satisfied with his promises that the *Maletolte* should cease in two years, to which effect a statute was made. In 1342, however, he was allowed to levy it for three years longer, by the assent of the Lords and a Council of Merchants whom he had irregularly summoned, instead of assembling the Commons. The Parliament suffered this on express condition that no such *maletolte* should ever after be imposed. For some years he found that the grants of Parliament were a more convenient resource, and to these he confined himself. He yearly assembled his Parliament, and obtained grants for the prosecution of the war, illustrated as it was by the great victories of Crécy in 1346, and Poitiers in 1356, the capture of Calais in 1347, and the great sea-fight of 1350 in the Channel. The consequence of this constant recourse to Parliament was that taxation became in some sort regulated upon a system; and sometimes when the King had exceeded his lawful authority and imposed a tax, the Parliament would, after remonstrance, themselves grant the same duty, evidently for the purpose of preventing an illegal precedent, and wisely preserving the bulk of their constitutional privileges. On one occasion, in 1346, when he had issued an ordinance that all landowners should furnish knights and archers in proportion to their rental, and each burgh so much money, the Commons remonstrated; when he stated the necessities of the war, and the assent of the Lords. This, however, did not satisfy the Commons; and he promised that it should never be drawn into a precedent. Several further remonstrances followed, and an act was passed, that for the future all such ordinances should be deemed contrary to the liberties of the realm, and further that no petition of the clergy should be granted without the Council certifying that it contained nothing against the rights of the Lords and Commons. To all this the King assented; but when the Parliament further insisted that no statute should be made at the petition of the clergy without the consent of the Lords and Commons, he gave their request a civil refusal.

In raising men for the public service, the King, during the early reigns of the Plantagenets, appears to have been under less restraint than in raising money. This greater latitude arose

from two causes: the pretext of danger to the state was always at hand, and the great bulk of the men levied were of the common people, whose interests were little regarded by the Barons, Knights, and traders that composed the Parliament. Hence we can trace hardly any limits to the King's authority in calling out his subjects on emergencies. In the Anglo-Saxon times, and even under the Anglo-Norman Princes, the reliance of the Crown was entirely upon the feudal services of the vassals with their sub-tenants; and it was a force much better calculated for home defence than for the operations of foreign war, because it only served for a limited time, and was seldom in the field. The number of men which the land was bound to furnish had so exceedingly decreased from the changes in the distribution of property, and from the neglect of the public servants who had charge of the musters and arrays, that they were supposed to have been ten times more numerous in the twelfth than in the thirteenth century; and the main reliance of the Edwards was upon contracts, for men properly equipped, made with the Barons at the hire of enormous sums, as much as one shilling and sixpence a-day for a mounted archer (equal to thirty shillings of our money); and upon infantry raised by mere Royal authority in the counties. It was indeed understood that no man could be compelled to leave his county unless in case of invasion; but pretexts were never wanting of such threatened dangers; and it was often urged that the interest of the people was rather to fight at a distance than have their homes ravaged by the war. Not only fighting-men were thus pressed into the military service of the Crown, and vessels to carry troops abroad, sometimes all the shipping to be found in any of the ports, with as many seamen as were wanted to man them, but workmen and artificers were swept away in great numbers and exposed to the perils of war. Thus near 400 of these were carried over to the siege of Calais in 1348. As many as 1100 vessels were seized in this manner and used by Edward III. before the battle of Blakensberg. When, in 1346, before Crecy he issued the ordinance which has been mentioned above, the Commons complained of the practice as regarded levies of men, inasmuch as the landowners were affected by that proceeding, and not merely the peasants. An Act was in consequence passed forbidding the

carrying of any man out of his county in future, excepting in the case of actual invasion.

Such was the struggle always maintained in those times between the Crown and the Parliament, that is, between the Sovereign and the great and little Barons and the mercantile classes, then first rising into importance. There were many infractions of the laws made to protect the subject, many invasions of the constitution as it was allowed to stand upon the provisions of the Charters, and the statutes confirming and extending those Charters. But the progress was steadily making towards a more exact observance of the law, a more secure enjoyment of popular rights, and a more strict limitation of the Royal authority. The reign of Edward III. was distinguished, as we have seen, by an additional statutory declaration of those liberties and those restraints, both as regarded taxing and the levying of troops, if indeed the latter enactment be not rather to be regarded as a new chapter added to the rights of the people and the limitation of the King's power. Another statute in his reign regulated and defined the right or abuse of purveyance, that is, the exaction of provisions on the Royal journeys. A third, made in 1351 by what has been in consequence called the Blessed Parliament, abolished the fanciful heads of the old treason law, and confined that offence within known and narrow bounds, which it has, in the further progress of legislation, never materially exceeded, unless for short periods of time.

Hitherto in tracing all the branches of the Constitutional progress in these three reigns, we have been upon well-known ground; but if we proceed further and inquire into the constitution of Parliament, as regards the mode of its election, and the course of its proceedings, we are involved in extraordinary difficulties. The ancient authorities, for the reasons stated in Chap. XXII., are either silent or give us very meagre information on those most important matters; and we know little more for certain than the result, without being able to ascertain the steps by which it was attained. Thus, though we know that the whole Freeholders, first the tenants *in capite*, and afterwards, but at a period unknown, also the sub-tenants of the Crown,\*

\* Mr. Hume erroneously thinks that the statute 7 Hen. IV. gave rear-vassals their right of election, but both that and the statute 11 Hen. IV. evidently assume that they already possessed it.

chose the Knights of the shire, we are little able to tell how the Burgesses were elected. The probability is, that all the Burghers in each town had a voice ; but we cannot say what regulated the issuing of the writs to the different towns, and whether this depended on the Royal will, or on that of the sheriff, or on the right of some towns to send representatives, and of others to be excused from the burthen, as it was then considered in consequence of the obligation to pay the members wages during the session. So we are left in some doubt as to the right of the Barons. All Prelates had seats in Parliament by virtue of their episcopal baronies ; and all who held lands by tenure of barony had a right to sit. But how these were distinguished from the lesser Barons, the freeholders, and how far the King could withhold the writ, as well as how he was to distinguish the classes of Barons, we are imperfectly informed ; only we may affirm, that a large discretion in this respect appears to have rested in the Crown. Again, mitred Abbots had seats at first as well as Bishops ; and their right to sit only ceased upon the dissolution of the monasteries in Henry VIII.'s reign.

Beside Barons, lay and clerical, the Judges and Privy Councillors were also summoned to Parliament, and formed part of the upper or Lords' house when this was separated from the lower. They at first sat and voted as well as attended ; when they ceased to be component parts of the Lords' house, and began to attend as assistants only (which the Judges do still), we are unable to say.

The number of the County members was generally two from each shire ; but in the 11 Edward I. four were chosen. The Burghs were, about the same period, not more than twenty ; each of which chose two members. In the reign of Edward III. the Burghs amounted to one hundred and twenty, and continued of this number till Elizabeth's time.

The precise period at which the Commons first sat apart from the Lords is equally unknown : indeed, it is perhaps less known than any part of the Parliamentary history. It can hardly be supposed that the different orders ever sat together after the Burghs sent members. At first the Knights sat in all probability with the Barons, and afterwards with the Commons. That in early times the separation of the orders, and even of different members of the same order, was frequent, there remains



clear proof. In 1282 the members for towns north and south of Trent met in different parts of the kingdom, and each came to separate resolutions as to supply. In 1360 the Commons met in as many as five different places. Nothing can more clearly show that the purpose in summoning the Commons was to obtain grants from them of supply. The clergy met in Convocation, and taxed themselves in their separate character. The Prelates who attended Parliament formed an entirely different body from that properly representing the Church; they sat as holding their lands and their bishoprics generally by the tenure of barony, and in this respect were exactly on the same footing with the lay Barons. The Commons only by slow degrees obtained a full equality with the Lords; they were gradually admitted to an equal voice upon the greater concerns of the State. All questions respecting the succession to the Crown, the guardianship of the infant Sovereign, the Royal marriages; treaties concerning the foreign possessions of the realm; all questions, indeed, that did not immediately concern the imposing of taxes or regulation of trade, appear to have been confined to the cognizance of the Lords. But the Commons occasionally took the opportunity of a difficult crisis to interfere at first only with their assent, and in support of the prevailing party in the Lords, generally by an almost unanimous resolution; and in the time of the first Plantagenets there are few instances of even this interference. The ordinary course of the Crown was to consult the different orders upon different matters, and no one order was held entitled to have its assent asked as necessary to the passing of any bill that did not affect its separate interests. The whole were only understood to be consulted of necessity on matters affecting the whole, and the Commons hardly ever upon the higher affairs of State. Thus the Lords were entitled to refuse their assent to bills affecting the Peerage or Prelacy, and generally on the *ardua regni*, and the Burgesses on matters affecting trade. But the Commons were not entitled to be heard on measures of the former description, or the Peers on those of the latter. Thus in Edward III.'s time a duty of 2*s.* tonnage on foreign wines, and 6*d.* in the pound on goods imported, was granted by the Citizens and Burgesses only, the consent of the Lords not being held necessary, as they were not supposed to be interested in the matter. Edward attempted once or twice to

carry this notion much further, defending his imposition of duties on foreign merchandize upon the pretext that it was paid by foreigners and did not affect his English subjects. But the Parliament remonstrated, and generally obtained his consent to abstain from such impositions.

Another course was more than once resorted to by him upon the same principle. He would assemble one class, as the foreign merchants in London, and ask an increase of the duties imposed by Parliament, in consideration of granting them certain commercial privileges. They agreed; and he then issued writs to all the towns that he might meet the members from each and offer them the same privileges on the same conditions. They met in an irregular kind of Parliament, and very wisely refused his offer. Another proceeding of his was liable to less objection, though it would at this day be deemed very irregular. He would assemble the Lords and obtain their approval of some measures, or the Lords and Knights of the Shire, or Deputies from the merchants, and thus fortified would hold a Parliament and propose the bill to them. But it was also usual to hold assemblies of the Lords apart from the Commons, and these were termed Councils rather than Parliaments. If any of the Commons attended, they were there only in their capacity of great officers of state or Privy Councillors; and it could but rarely happen that these offices were held by any but the Peers, lay or ecclesiastical.

The time of holding Parliaments was, as we have seen, early the subject of legislative enactment. In Henry III.'s reign, in Edward I.'s and in Edward II.'s, provision was made that Parliament should be holden yearly at the least. In Edward III.'s time a new Act was passed requiring a Parliament to be held every year.

When the Parliament met there was generally an adjournment to give the members time to arrive. The Chancellor then explained the King's reason for assembling them, and directed each order to go to its own chamber. Two committees were then appointed of what was called *Triers*, that is, to examine and decide on petitions. The Lords chiefly occupied themselves with such subjects, administering justice in the last resort, deciding cases when the Judges differed or thought they had no authority, and granting relief generally on the application of

parties. The number of petitions presented is said to have been enormous under the first Plantagenet Princes after *Magna Charta*. It is related that a practice grew up of lawyers getting counties to elect them, and then surreptitiously intruding the claims of their clients into Petitions or bills of the Commons, which thus appeared to back those claims before the Lords. This led to the statute prohibiting lawyers from being chosen knights of the shire. There was little chance of the merchants and others in burghs returning them.

All propositions in either house took the form of Petitions to the King for his order, assent, or edict, which thus had the force of law; and at the close of each session, the Clerks of the Chancery reduced the whole to the form of Statutes, which were then sent to the Judges for their guidance, and to the Sheriffs of Counties for general publication. But it thus often happened that the matters in the bills underwent great alteration; that the King caused the redress which the Parliament had sought, and which he had promised them, to be omitted in the statute; and that the clerks themselves, from carelessness, ignorance, or sinister motives, changed the terms of the law. It also constantly happened that as soon as the supplies were granted Parliament was dismissed by prorogation; the promised redress was forgotten; and the King's officers and others, whom the Acts commanded to do certain things, entirely disregarded the command. Indeed, the King even claimed a right to alter in his Privy Council the provisions of the Acts that had been passed during the session. These abuses, which never could at any time have been the law, were complained of, and regulations were made to prevent them in future. The Commons required that all enactments should be put into their final shape before the Parliament was prorogued; and in 1354 a statute was made strictly forbidding any alteration whatever of an Act after it had been made, without the consent of both houses. It was not so easy to compel the strict execution of the laws made, and we meet with constant complaints of their being inoperative.

It is remarkable how the careless manner of preparing Acts of Parliament has been handed down even to our day. It is a remnant of the "olden time," and the practice of leaving everything to the clerks, that there is at this day so very imperfect a security against careless or wilful error, or alteration in the most impor-

tant of all records, that of the statutes of the realm. There is no true record, no constat of even bills being read as often as the law of Parliament requires, nothing except a mere note of the clerks of the Houses; and when an alteration is made in a bill by one House, it is made on an unsigned and wholly unauthenticated slip of paper. A serious irregularity lately arose in this way, and gave rise to much discussion.

The imperfect provision made in the old Acts for carrying into effect the avowed intention of the legislature is well known. Thus when an aid, or a tallage, or a subsidy was granted, the machinery for raising it was left undescribed. A tallage was in fact a property tax, and the Act granting it gave in a few lines what it takes now a hundred pages to describe. The whole manner of levying the money (a thing fully as important to the subject as the amount to be levied) was left in the King's discretion. The greatest oppression having been suffered in Edward II.'s time from his collectors, Edward III. fell upon an expedient which gave very great satisfaction to all, though it was certainly an unauthorised act of legislation in itself; he appointed commissioners to compound with each county and each town for the amount which they should pay towards the tallage or subsidy that had been granted in general terms by the Parliament.

When the King dismissed, prorogued, or dissolved the Parliament, and it seldom sat more than one session, a committee was sometimes appointed of the Lords to sit during the recess, for the purpose of finishing the judicial or administrative business which had proved too bulky to be dispatched during the session, the time being always very short during which Parliament was kept together. Abuses arose out of this practice, the committee assuming powers of a legislative kind; and another practice of a far worse nature was resorted to in troublous times, of which we have seen already two instances under Henry III. and Edward II., that of delivering over the Prerogative of the Crown and the legislative power of Parliament to a select committee, always composed, like the Vacation Committee, of Lords only.

The constitution of Parliament appears to have undergone little or no alteration from the time of Edward III., but its functions became gradually better defined; the authority of the Commons was pretty regularly on the increase; and the privileges of its members became more fully secured. In the turbulent reign

of Richard II. the Lords alone gave absolute power to the Duke of Gloster during the King's minority. But the Commons carefully looked after the public expenditure, required to have the inspection of the accounts, insisted on the supplies being enrolled, in order that the expenditure might be better examined, and only granted a subsidy on finding that everything had been regularly carried on. This was in 1378, and next year the King offered to produce all accounts; when the Lords chose a committee of their number to examine even his household expenditure. The Parliament having now required that the ministers of state should be chosen with their consent, and having imposed a poll-tax, the well-known insurrection of the common people under Wat Tyler broke out, and the sufferings of the villeins or serfs, the bulk of the people, excited such fury that the King granted a charter of emancipation to appease it. The aristocracy immediately revoked this grant. The Commons now required, for the first time, the removal of one obnoxious minister, Suffolk, the Chancellor: the King said he would not at their desire displace the meanest scullion in his kitchen. He was, however, forced to yield, and Suffolk was at first dismissed, then impeached. The Lords now appear to have usurped the powers of the Government, which they handed over to a committee of their number, creatures of Gloster, with legislative as well as executive authority, as in Henry III. and Edward II.'s time. This happened in 1386, and the next Parliament was devoted to that ambitious Prince. The Commons, however, suddenly took part with the King,\* protected him in his resumption of the Royal authority, and even after his murder of Gloster, helped him to pass the statute of Provisors, which finally excluded the papal power, and established the Royal authority in all ecclesiastical appointments; and they gave him both a subsidy for life and appointed a committee of his creatures, vested with supreme legislative powers. The result is well known; an universal disgust was excited by a revolution which changed the government into a despotism—a revolution, too, effected by the people's representatives, and for the benefit of a Prince whose life was as disreputable and base as his capacity was mean. Henry of Lancaster was enabled to dethrone and murder him, and that family reigned for

\* Nothing can be more obscure and more defective than the records which have reached us of all these sudden changes.

two generations peaceably, for a third with constant resistance and various fortunes during a desolating civil war. But the infirm title of the Lancastrian Princes, although supported by the universal consent of the country, and backed by the great talents of the first and the brilliant victories of the second monarch, was in that early age a source of such weakness, that none of them ever ventured upon any excess of the legal prerogative; all of them were fain to await the will of their Parliaments for grants of money, and all of them suffered the privileges of Parliament to grow up and be consolidated.

Thus Henry IV. was no sooner seated on the throne than a Parliamentary declaration was made that all transfer of the supreme power of legislation to any committee of Parliament was illegal. The interference of the King in elections, which had first been practised by Richard II., was complained of as soon as the importance of the Commons came to be partially felt, and the sheriff was restricted from exercising the power he had hitherto assumed of returning persons not chosen by the true majority of votes. Moreover the Commons now began to interfere with all parts of the administration, and to insist upon being consulted on other matters as well as on questions of taxation. They were allowed to have freedom from arrest, though an Act to declare this immunity was at first refused, and only granted in the reign of Henry VI. They claimed freedom of speech; and on the sentence which had been passed on Haxy, one of their members, in the last reign, for words spoken in Parliament, being now reviewed, a complaint was made of the Speaker making verbal speeches to the Lords and the King—a practice, however, which has been continued to our time, and which gave rise, within my recollection, to a formal motion against Mr. Abbot, supported with great ability, and characteristic and hereditary love of liberty, by my excellent friend Lord William Russell, that Speaker having taken upon him to pronounce an opinion against the Catholic question while addressing the Throne at the close of the session. The false entries made after the end of the session were again complained of, and it was agreed by both houses that these should be in future made in presence of a joint committee. Grievances were regularly stated, and redress promised, previous to any supply being granted. The King was even obliged to send out of the country on one occasion persons dis-

tasteful to the Commons, among others four foreign attendants on the Queen, and against whom the King vowed that he knew no ground of complaint whatever but that the two houses disliked them. About 1401 a most important step was made by the Commons requiring to determine in each grant the appropriation of the money, to which the King assented, excepting only such moderate sums as might be left at his free disposal.

The brilliant career of Henry V., and his marvellous achievement of nearly conquering France, and obtaining the French crown, which a singular combination of accidents aiding the gallantry and skill of his military operations enabled him to perform, while it gratified the vanity of the nation, and made his wars as popular as they were pernicious to the country, had no effect whatever upon the balance of the constitution. On the contrary, while he always obtained his resources from the grants of the Commons, he treated respectfully their complaints; pledged himself that no alteration of the statutes, when made, should ever be permitted without their consent; and, what had never before been distinctly admitted, and what was directly contrary to the understood rule and practice in the time of the Edwards, he agreed that no statute should have any force or effect without their express assent, although they granted him the tonnage and poundage for his life, a thing never before done except in Richard II.'s reign, and on the eve of his usurping absolute power. Henry laid before them his negotiations with the Emperor Sigismund, and he applied to them for interposing the security of Parliament to the loans which his wars obliged him to contract—a precedent now first given, and unfortunately followed afterwards to so ruinous an extent.

To his unhappy son he bequeathed the crown of France as well as England; and his quiet inheritance of both the great genius of his brother, the Duke of Bedford, would have ensured if anything could have maintained such a conquest, or anything could quiet the English Barons. But beside losing his foreign dominions, this ill-fated prince was doomed to pass a life of thralldom, of deposition, of constant vicissitudes, while his kingdom was torn by the most violent factions, and his people became a prey to all the evils of civil war. In the earlier part of his reign, indeed, he was only nominally on the throne. From his accession, at nine months old, to the age of twenty-one, he had little or no

power. The regency was committed to a Council and a Protector by a resolution of the Lords, without any interposition whatever of the Commons. Thirty-two years afterwards, when he had fallen into a state of mental alienation, the Lords alone appointed a committee of their number to visit him, and ascertain his capacity; and on their report an Act was passed appointing a Protector. He recovered his reason and his authority some time after. He again fell ill, when the Commons went no further than to request that the Lords would provide for the emergency by appointing a Protector. They named York accordingly. He required as a condition to his accepting the place that his authority should only be determined by the King in Parliament, with the advice of the Lords Spiritual and Temporal. By the Lords alone then was the defect of the Royal authority supplied, and they named the great officers of state, as well as the Protector, without any interference of the Commons. On one occasion, while Henry possessed his authority, the Commons, who never were consulted on such high questions, unless when a grant of money was required, or a statute was to be passed regulating the administration of the government, yielded to a popular clamour wholly groundless, and impeached a minister, Suffolk. The sentence of banishment was not pronounced by the Lords, but by the King alone, the Lords protesting that it was his act, not theirs. The mob, as is well known, dissatisfied with the punishment, put him to death. To speak of this period, therefore, as one of the least authority upon questions relating to the Regency, or indeed to the powers of either house of Parliament, seems one of the wildest and most unreflecting errors that could be committed. Nevertheless in the discussions on the regency, 1789, no precedent was made more the subject of reference and argument than those furnished by this troublous reign: a singular proof of the value attached to precedents, and the disposition blindly to consult them!

In some respects the Commons made progress during those times. They obtained that Parliamentary recognition of the privilege to be free from arrest which Henry V. had refused. They likewise were allowed to pass statutes regulating the modes of election and preventing false returns. Early in this reign, too, the qualification of forty shillings was fixed to the right of voting for knights of the shire, an encroachment certainly upon



the rights of freeholders, but a clear proof of the growing value attached to a seat in the lower house.

The conduct of the Parliament, both Lords and Commons, in the times of which we have been treating, was as bad as possible in all particulars save what related to their own privileges. The nation can never be sufficiently grateful for the steadiness with which they then persisted in establishing their legislative rights, and their title to interfere in the administration of public affairs. But their whole conduct towards individuals and parties, the use they made of their power, was almost always profligate and unjust in the greatest possible degree. During all Richard II.'s reign, all Henry VI.'s, all Edward IV.'s, and Richard III.'s, up to the accession of Henry VII., they blindly followed the dictates of the faction which had the upper-hand—the prince whose success in the field had defeated his competitors, the powerful chief whose authority prevailed at the moment. The history of their proceedings is a succession of contrary decisions on the same question, conflicting laws on the same title, attainders and reversals, consigning one day all the adherents of one party to confiscation and the scaffold, reinstating them the next, and placing their adversaries in the same cruel predicament. Thus, in 1461, on Edward IV.'s victory, they unanimously attainted Henry VI. and all his adherents, including 138 knights, priests, and esquires, as well as princes and peers, and declared all the Lancastrian princes usurpers. A few years after both Edward IV. and Henry VI. were actually prisoners at one and the same time. The next year Edward, who had not regained his freedom and his crown for many months, was fain to fly the realm, when all his adherents were attainted without exception. Richard III., notwithstanding the unusual horror excited by his manifold crimes, after a few months wearing the crown, which he had been offered by many of the Lords and some citizens and gentlemen, but by neither house of the legislature, found it quite safe to assemble a Parliament, which at once recognized his incurable title, and attainted all his adversaries. When the Earl of Richmond defeated and killed him at Bosworth, and took the crown offered him by the soldiers on the field of battle, the Parliament immediately reversed all the attainders of the Lancastrians, and declared the princes of that house to have been lawfully seized of the crown. Nay, the Commons settled tonnage and

poundage on him for life. They however added as a kind of condition, in which the Lords concurred, and to which he assented, that he should strengthen his confessedly bad title to the crown by marrying Elizabeth, the representative of the York family. At the same time, partly as a means of finance, somewhat inconsistently with their opinion of the York title, they attained, that is confiscated, thirty of the York party, on the unreasonable and indeed unintelligible ground of having been in rebellion against Henry when he was only a private gentleman, Earl of Richmond. But it is to be observed that the statute limiting the crown to Henry and the heirs of his body was made by the assent of the Lords at the request of the Commons.

Except in these Acts, in requesting Henry would marry, and in obtaining from Richard III. a declaration against the legality of the grants extorted by Edward IV. under the preposterous name of benevolences, the Commons never interfered in state affairs, successions, regencies, or appointment of protectors, during these latter Plantagenet reigns, any more than they had done in the earliest periods of the family's history. Richard was chosen Protector by the Council, as Gloster had been named with a Council of Regency, on Henry V.'s decease, by the Lords alone—as Henry IV. had been by the Lords, when they declared Richard II. dethroned—as Richard of York had been declared also, by the Lords alone, heir to the Crown on Henry VI.'s decease. The Lords too declared Edward IV. King after the battle of Barnet. The aristocratic form of the government is sufficiently proved by these passages; by the power of the Barons, which disposed of the crown repeatedly in the field as well as in Parliament; by the occasional arbitrary authority conferred upon committees of their own body. It was only by slow degrees, and after the Crown had succeeded in curbing the Baronial influence, during the next period of our history, that the Commons could be said to have obtained their full equality with the Lords in the frame and practice of our Constitution. To this fourth period, the reign of the Tudors, we now proceed.

## CHAPTER XXVI.

## GOVERNMENT OF ENGLAND—THE TUDORS.

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Men's conduct more important than Institutions—Tudors and Plantagenets compared—Sources of the Tudor power: Title; Economy—Infamy of Henry VIII.'s Parliaments—Three Examples worse than the rest—Henry VIII.'s Judicial Murders—Henry VII. and VIII. compared—Edward VI.'s Reign—Subserviency of Mary's Parliament—Privy Council Jurisdiction; Star Chamber—Its operation on Parliament and Juries—Abuse of the Power by Individuals—Elizabeth's Reign; Progress of Parliamentary Privilege—Question of Monopolies—New Boroughs added—Tudor Measures touching Religion—Elizabeth's Persecutions—Causes of the Subserviency of the Tudor Parliaments.

NOTHING in the history of Government so strongly illustrates the position that the tyranny of rulers and the liberties of their subjects depend still more upon the manner in which the people and their leaders act, and as it were work the constitution, than upon the frame of the government itself, as a comparison of our history under the Plantagenets and under the Tudors. The powers of the Crown and of the Parliament, the political institutions of the country, its municipal as well as its organic laws, were the same under the two lines of Princes; nor had any event happened, except the destruction of the ancient nobility, to arm the latter family with a force not possessed by the former race; and that important event had not taken place all at once, by any sudden revolution, but by a series of civil wars, with their consequent attainders and confiscations, which left hardly any of the old baronial families, and substituted in their room a number of new ones, neither possessing the same large domains, nor enjoying the same influence over their vassals, nor holding the same place in the public estimation. The great diminution of aristocratic power, that is of the feudal aristocracy, thus occasioned during a century, from the reign of Richard II. to that of Richard III., had not materially increased or confirmed the power of the Sovereign, partly because of the infirm title of the House of Lancaster during the earlier portion of the period, partly because of the constant struggles of the King for his crown with one party or other of the Barons

during the remaining and greater portion of the time. But when Henry VII., by his marriage with Elizabeth of York, put an end to the contest of the two Roses, it was of great importance to the Royal authority that the feudal power had ceased to be formidable. Nevertheless, no change whatever had been effected in the fundamental principles of the constitution from the time of Edward III.—hardly indeed from that of Edward I.—as far as the extension of the prerogative was concerned; and the progress of the constitution had since the decease of Richard II. been altogether in the opposite direction, of confirming the rights of Parliament, and extending the influence of the Commons over the administration of public affairs. The Tudors, however, reigned with a more absolute authority than their predecessors had possessed.

The better title of these monarchs no doubt contributed much to their authority as compared with that of the Plantagenets who immediately preceded them. But they owed still more to the state of their finances. Almost all the concessions which had been obtained from the Crown for the last two hundred and fifty years had been extorted by the pecuniary difficulties in which the successive princes were placed, first from the defects of the feudal policy, throwing the Sovereign upon the resources of his land revenue and the services of his vassals, afterwards from the expensive wars carried on upon the Continent. Henry VII. was the first of our kings since Henry III. who ever lived within his income. His avaricious habits inclined him to rigid parsimony; when the grant of tonnage and poundage for life was made to him, he found that he could gratify his propensity to accumulate without having recourse to Parliament for supplies, and he only applied in 1504 to that body for the feudal aids on knighting his eldest son and marrying his eldest daughter. So little, however, was he in want of their liberality that he accepted but 30,000*l.* of the 40,000*l.* which they granted him. The treasure which he left enabled his more brilliant and spendthrift successor to go on, if he had so chosen to do, for some years without a Parliament. Thus, had it not been for Perkin Warbeck's rebellion, which gave room to forfeit the estates of those attainted for adhering to him, there would have been no Parliament assembled from that which ratified Henry VII.'s title in 1485 to that which he called

in 1504 for a special purpose, nor from that till his son's in 1517 ; and as the Parliament of 1494 only met for a few days, on account of the rebellion, and that of 1507 for a like period, these two princes might have ruled without any national assembly for a period of above thirty years. But a comparison of the number of Parliaments called by the Tudors and the Plantagenets will set this in a very clear light. The first three Edwards reigned 105 years, and called 119 Parliaments. The five Tudors reigned 118 years, and called only 58, not nearly half the proportion. The whole Plantagenet reigns from Edward I.'s accession to Richard III.'s were 205 years ; and there were called 193 Parliaments. Even if we deduct the several Parliaments held in the same year, and take it by years, the Plantagenets held Parliaments in 130 years of their 205 years' reign ; the Tudors only 56 years in their 118. Edward III. held 53 in the 50 years of his reign ; Edward I. 49 in 35 years ; while Henry VII., in 25 years, held but 7 ; Henry VIII.,\* in 37 years, 21 ; and Elizabeth, in 43 years, only 13.

But the conduct of the Parliament in the reign of the first Tudors presents the most degrading and the most disgusting spectacle which our history has to record. The successive Parliaments in Richard II., Henry VI., and Edward IV.'s reign were subservient to the faction of the day, and committed violence by wholesale upon whatever party happened to have lost the superiority in the field. But it is more offensive to all feelings of honour, and betokens a baser spirit, or rather a more complete want of all spirit, that the same body, without any revolution having happened in the state to inflame men's passions, or any physical force having been actually impressed upon it, should for the whole of a long reign have made itself the unresisting instrument of whatever oppression a ferocious tyrant could devise for gratifying his cruelty, his lust, or his caprice. Upon one only occasion can we perceive any disposition to resist Henry VIII. : it was in 1525, when he attempted to levy a tax, and afterwards a benevolence. The clergy, whom he first attacked, excited the citizens of London to object, and the Parliament remonstrated, first against the illegal exaction of the tax, afterwards against the demand of a benevolence, as against

\* These numbers are taken from the Statute Book, which omits several Parliaments ; but the proportions are probably not varied by such omissions.

the statute of Richard III. Nevertheless, the King obtained what he sought, forcing men to compound for fear of violent treatment; and no step whatever was taken to make those answerable who were the instruments of his oppressions—those for instance through whom Henry sent an alderman of London to serve in the Scotch invasion as a punishment for refusing to contribute.

Let us, however, enumerate some of the statutes which were made, and which were immediately acted upon in defiance of all justice and all principle, though not of law.

It was made treason to deny the King's supremacy, though two years before this notable law, to assert it would have been deemed rather insanity than wickedness. Under this act Bishop Fisher and the famous Sir Thomas More both suffered death. It was made treason for any person to marry the King after leading an unchaste life in any respect. To have any criminal conversation with any of his reputed children, with his sisters, aunts, or nieces, was in like manner made high treason. The marriage with Catharine was declared invalid in the face of the whole facts of the case; and the marriage with Anne Boleyn and the legitimacy of her issue were declared by law, with the penalty of imprisonment and forfeiture against all who refused to swear to it, and of death against all who slandered either the Sovereigns or their issue. Then when he tired of Anne Boleyn and put her to death by a mock trial, the Parliament declared that the same marriage had from the beginning been void, and the issue counterfeit or bastard. Not only did this servile body gratify all his caprices in respect of his wives and progeny, marrying and unmarried him, legitimatizing and bastardizing his issue, at his nod, but in settling permanently the order of the succession they allowed him to alter that order, and to entail the Crown at his pleasure; and thus gave him a power of disturbing the realm, of plunging it once more into all the horrors of civil war, the security from which is really the only benefit, except the Reformation, that the country owes to the Tudors. Their full gratification of his rapacity was in part owing to their timid servility, in part to their religious zeal; but how great soever may have been the benefits derived from suppressing the monastic orders or the exclusion of the Abbots from Parliament, it must be allowed to have been purchased at a costly price, when we

reflect, first, on the wholesale confiscation of the property belonging to nearly 900 bodies, besides above 2300 chantries and chapelries, and, next, on the scandalous perversion of all justice by which the parties were by thousands condemned to poverty and stigmatized in their reputation, unheard and before a judicature of their enemies; and, lastly, on the use made of the spoil thus greedily seized upon false and slanderous pretexts, or given up with reckless profusion to the tyrant, and parcelled out by him among the creatures of his favour, the tools of his oppression. Whatever victims he chose to destroy, the Parliament attainted, often without hearing them in their defence and against the bills. This was done, too, after they had asked the opinion of the Judges on the possibility of reversing in a Court of Law a statutory attainder, and after the Judges had stated, that though such judicial reversal was impossible, yet it became the Parliament to set an example to all inferior judicatures of not violating the principles of justice. Thus Cromwell, having lost the tyrant's favour because he had recommended the marriage with Anne of Cleves, and Henry had tired of her, the Parliament readily attainted him of treason and heresy without any hearing; and they did the like by Dr. Barnes, who was burnt for heresy. Many others shared the same fate. Anything more ridiculous than the reasons alleged can hardly be conceived. Surrey, the most accomplished nobleman of his age, suffered death by Act of Parliament, because he had quartered the Royal arms with his own, and this the savage despot called treason.

Three acts of Parliament, however, stand out before all the rest in their infamy:—1. The King was, in 1529, formally released of all the debts he had contracted six years before, although his securities had passed into the hands of third parties, and many persons held them by purchase for various sums; and this abominable precedent was followed, in 1541, with the incredible addition that if any one had been repaid his debt the money was to be refunded by him. 2. The King was empowered,\* as a general law, on attaining the age of twenty-four, to repeal all Acts of Parliament made while he was under that age; so that whatever was enacted during the Regency became of no avail unless he chose; and even after the Regency had ceased, he was suffered

\* 28 Hen. VIII. c. 17.

to rescind whatever had been done for six years. 3. The proclamations of the King in Council, if made under pain of fine and imprisonment, were declared to have the force of statutes, provided they affected no one's property or life, and violated no existing law; but the King by proclamation might make any opinion heretical, and might denounce death as the penalty of holding it.\*

The judicial, or rather statutory, murders of Henry VIII. were far more numerous, and, in their circumstances, more revolting than those of his father. Yet that Prince must be allowed to have left him the bad example. He inveigled Warwick, the unfortunate son of Clarence, into a confession that he had contrived, with Perkin Warbeck, his escape from the Tower, where he had been confined since he was twelve years old; he was now fifteen. For this he was tried as for a conspiracy, and executed. Suffolk, a nephew of Edward IV., and near in the order of succession to Henry's Queen, had engaged in a conspiracy in the Low Countries; and Henry, having obtained possession of the Archduke's person by the accident of his shipwreck, obliged him to deliver up the Earl on a promise of sparing his life. He died before he could, as he wished, break his word; but his dying injunction to his son was that he should put the Earl to death; which Henry VIII. did a few years after, upon the old attainer.

There was little difference in the disposition of the two tyrants, as far as an unfeeling nature and overbearing temper ministered to their absolute sway. But the son's more careless expenditure of money, more frank, indiscreet habits, and more affable manner, partaking, in outward show, of generosity, honesty, and even kindness, gave him a popularity in his own times, especially during the first half of his reign, which the father never possessed, labouring as he did under the two greatest drawbacks to popular favour that a Prince can have, avarice and reserve; while the cruelty of the son's whole conduct has made him justly more abhorred by after ages, when the services rendered by his lusts, and his rapacity, and his caprice, to the cause of the Reformation can no longer blind us, as it did his contemporaries, to the enormities of his execrable character.

As much of the disgraceful subserviency of which we have

\* 31 Hen. VIII. c. 8.



been contemplating the fruits was owing to the severe character of the first Tudor, and the violent temper of the second, we might naturally expect the Parliament to recover somewhat of its independence under the infant prince who followed them, and in the necessarily feeble government of a Regency. Accordingly, the first Parliament of Edward VI. abrogated all the new treasons invented to gratify his father's caprices.\* Others of his bad and cruel laws were mitigated; though the power of proclamation was exercised by declaring all propagators of tales and lies affecting the Government liable to work in the galleys. An important improvement, however, of the Treason Law, the only constitutional gift of the Tudor race, was made during this reign; two witnesses were now first required† to convict. The illegal conduct of the Council of Regency, which owed its existence to Henry VIII.'s appointment under the powers of an Act made late in his reign,‡ and which nevertheless wholly altered the Regency's own constitution and made Seymour, the King's maternal uncle, Protector, with full power, was submitted to without any objection or hesitation, by the same Parliament; and his brother the admiral's attainder was easily passed by the same body to gratify that powerful nobleman.

The tendency of Parliament in those times to obey the Royal dictates is perhaps still more clearly seen in the early acts of Mary than even in all their subserviency to her father. The restoration of the Catholic religion and the Romish supremacy was accomplished by this young woman with a severe struggle it is true,§ but accomplished by a person void of capacity, without any experience, unpopular in her address, only armed with the name and prerogative of royalty, only supported by her own fanatical firmness of purpose, and by the remains of the sect which had been defeated and crushed in the two former reigns. The resistance made, though ineffectually, to this change is rather a proof that religious feeling will arm men against the influence of their fears or their sycophancy; it was the only sure indication of the Parliament having recovered its tone.

The Spanish marriage, however, confirmed and increased the opposition which the Queen's bigotry at first excited; and

\* 1 Ed. VI. c. 12.

† 5 and 6 Ed. VI. c. 11, § 12.

‡ 28 Henry VIII.

§ Mary tells Cardinal Pole, in a letter to him, that the Supremacy Bill had not been carried without "contention, bitter discussion, and the utmost pains of the faithful."

her third Parliament rejected some of her favourite bills. The care taken by her to influence the House of Commons, where alone she encountered any opposition, illustrates this still further. Edward had added twenty-two burghs, of which seven were insignificant and easily influenced. She enlarged the number by fourteen, and she wrote also a circular letter to the sheriffs, directing them to recommend good Catholics to the electors; and the Spanish ambassador is believed to have applied the influence of money directly in favour of the marriage with Philip. The French ambassador addressed himself zealously to the same quarter, the Commons, while engaged in resisting the Queen's profligate and infatuated design of transferring her kingdom to the Spanish monarchy, and lavishly promised the aid of France against this abominable scheme.

In all these four reigns, as well as in that of Elizabeth, the criminal judicature of the Privy Council, exercised in one branch called sometimes the King's Ordinary Council, sometimes the Council of Star Chamber, from the ceiling of the room in which it met, was a very important addition to the Royal authority, and a great restraint upon both the Parliament and the people. The Crown had recourse to this power originally in order to control the factions of domineering Barons, who, yielding to the forms of the ordinary jurisdiction, entirely defeated its substance by overpowering the juries and even the judges before whom they or their retainers were brought, and by whom their civil rights were decided. A statute had been made early in Henry VII.'s reign\* confirming the jurisdiction of the Star Chamber in cases of combinations to obstruct the due administration of justice; and there can be no doubt that much benefit resulted from the interference of the body in times when the feudal power reduced the judicial to a mere name whenever great men or their followers were concerned. The preamble to the statute I have just mentioned sets forth, that by the practices of the great men, the "police and good rule of the realm was almost subdued, and the security of all men living, their lands and goods, destroyed."† But the most grievous

\* 3 Hen. VII. c. 1.

† Lord Bacon (Life of Henry VII.) describes as the evils aimed at by this Act, "combinations of multitudes, and headship of great persons." These, as he observes, are the two main supports of force against law. The Statute of Fines, also made in this reign, gave another blow to the aristocracy, by facilitating the alienation of lands.

abuses arose out of this Star Chamber jurisdiction; and the Sovereign was enabled by it, not only to intimidate all who would oppose him legally in Parliament as well as factiously in the country, but to interfere with the administration of justice fully as much as the Barons had ever done, and more systematically. Not only did the Plantagenets and the Tudors commit to prison or ransom for heavy fines those against whom they conceived an ill will, thus depriving them of the protection of the common law, and signally violating the most remarkable provision of the Great Charter; but they exercised a like control over members of Parliament who had offended them, and jurors who had given verdicts displeasing to them; committing such members and jurors, interrogating them, sentencing them to imprisonment, and only releasing them on payment of heavy fines. A capital jurisdiction was never exercised by them, at least directly; but it really amounted to the same thing, whether they sentenced obnoxious men to death or compelled timid jurors to find them guilty through dread of personal consequences. It was in this Council that all the Sovereign's more violent acts were performed, because he was thus covered over with an apparent authority by the concurrence of an ancient body. Mary committed by this sentence a knight to the Tower, for his opposition to her in Parliament. She committed to prison by a like order in Council all the jury that acquitted Throckmorton; four were released on acknowledging their offence; the others proving refractory were fined, some in the enormous sum of 2000*l*.

It even appears that individual Privy Councillors, assuming to be clothed, as it were, with an emanation of Royal authority, would commit persons who offended them. As late as the latter part of Elizabeth's reign (1592) there was a representation made by eleven of the twelve Judges to the Chancellor and Treasurer, complaining that this outrageous power was used to prevent parties from bringing actions, as well as to punish or threaten them for other lawful acts.

Other interferences with the administration of justice were likewise practised by the Crown. The Sheriffs selected Jurors, according to the Crown's presumed and frequently declared wishes. That officer was always employed as representing the Sovereign in his Bailiwick. Thus we find letters from two of

Elizabeth's Council, to which one Ashburnham had presented his complaint, but without prosecuting it, requiring that the Sheriff of Sussex should not aid his creditors to molest him until the pleasure of the Council be known. An appellate jurisdiction in earlier times appears to have been exercised by the same body. A case, mentioned in Hale's MS., was lately cited by our Judges before the House of Lords (*Reg. v. Millias*), showing that the Star Chamber had revised a judgment of the Common Pleas in a real action—a Writ of Dower.

The Star Chamber took upon it to superintend the abuses of the Press. It prohibited the circulation of Roman Catholic works, and ordered them to be seized. With its concurrence Elizabeth issued a proclamation for trying by martial law the importers of bulls and libels; another, denouncing capital punishment against those who attended riotous meetings, or committed acts of vagrancy; and a third, ordering Anabaptists to quit the realm, and Irishmen to return home.

The power of regulating generally all matters punishable by law, and of enforcing by particular modes things commanded by statutes which did not describe the means of their enforcement, was always, under the Tudors as well as the Plantagenets, assumed by the Crown; and within this general and important head came under both families the power of regulating commerce. But the Tudors much more rarely interfered to levy money without Parliamentary sanction, and Elizabeth only once appears to have done so, when she imposed a duty on sweet wines, and retained one of her sister's duties on foreign cloths. She also, in 1586, made the Clergy pay an assessment not voted by Convocation. Loans or benevolences were two or three times exacted by her, notwithstanding the statute of Richard III., but her economy always enabled her to repay them; and she was truly said to have been the first sovereign in whose reign the constitutional right of Parliament to grant supplies was practically made of universal application.

The independence of Parliament generally was much more secure under her than under her father or her sister, and it showed a far higher spirit, notwithstanding her strong assertions of her prerogative, and her exalted notion of its extent. In her father's time the Commons had punished, with his concurrence, those who arrested members during the session. This

under her reign became a common assertion of privilege ; and both strangers and members were now severely punished for contempts of the House and its jurisdiction. Even with the Queen herself the Commons ventured to struggle in a way very different from anything that her father would have borne. They disregarded her positive commands, intimated through the Speaker, that they should no longer discuss the question of her naming a successor, and though she continued to desire that they should leave matters of state alone, she nevertheless revoked her former injunction.

The Commons may be said to have obtained another victory over her in their remonstrance against Monopolies—an oppressive source of revenue, but one not denied to have been vested in the Crown. In the session 1571, though Bacon, the Chancellor, had, in answer to their claims of liberty of speech, renewed the recommendation against meddling with state affairs, the Commons began their struggle against that great abuse. The Queen, who set great store by this prerogative, calling it the fairest flower of her garden, desired them to spend little time in motions, and make no long speeches. The chief mover against monopolies (one Bell) was called before the Star Chamber and frightened ; the Lord Keeper Bacon severely reprimanded them at the close of the session for meddling “ with matters not pertaining to them, nor within the capacity of their understanding.” Next year, however, the new Parliament chose Bell for their Speaker, but proceeded no further ; indeed, they seem to have been terrified by the proceedings in the Star Chamber at the close of the last session, and they begged the Queen on presenting their bills “ not to form an ill opinion of the House if she should dislike them.” The next time they met, the most bold and even violent language against her infringement of their privileges was freely used ; and she was plainly told, that if they had committed faults, “ so had she great and dangerous ones,” and taxed with “ ingratitude and unkindness to her people.” Wentworth, the person who had led the way in this freedom of speech, was committed to the Tower for a month, and reprimanded on being discharged when the Queen had forgiven him. At their next meeting, in 1581, the usual warning as to interfering in state affairs was given. Wentworth was again committed to the Tower by the House, and

detained till its dissolution, for new acts of boldness in debate. Again, in 1588, he moved on the question of the succession, and was, with one who seconded him, committed by the Council to prison; as was another member soon after for presenting a bill against abuses in Ecclesiastical Courts contrary to the Queen's injunction. She did not release them while the session lasted, although petitioned by the House on the ground that no subsidies could be granted from places whose members were in custody. At length, although in 1597 the Queen prevailed on them by soft and pleasing words to leave the remedy of monopolies to her care, yet finding she did not correct the abuse, in 1601, after four days' debate, and the refusal of the Commons to adopt the contemptible advice of Cecil and Bacon that they should proceed by petition and not by bill, the Queen sent a message to promise a general revocation of all such grants as were found on trial to be against law.

The importance of the House of Commons in Elizabeth's reign, as in that of her sister and brother, is evinced by the pains taken to secure an ascendancy in it. She added no less than sixty-two burgh members, chiefly by enfranchising petty burghs under royal or noble influence. The general attendance was under 250, and hence those new members must have given great weight to the Crown. The ministers and the peers also used every exertion to influence elections elsewhere.

The services rendered by the Tudors to religion, in freeing us from the yoke of Rome and the superstitions of popery, have been more than once glanced at. But it must be recollected that these favours were bestowed with the characteristic tyranny of the family. Nothing can be more clear than the connexion between Henry VIII.'s revolt against the Pope, and his desire to break his first marriage from his wish to espouse Anne Boleyn; and his adherence to the Catholic errors not only lasted for life, but was testified in the most arbitrary Acts of his reign, Acts which his submissive Parliament almost immediately enabled him to pass. The very worst, perhaps, of all his statutes is that called the "*Law of the Six Articles*," or as the Protestants termed it, "*The bloody Act*," made after he had reigned thirty years and separated from Rome five years. Some of the grossest errors of Romanism were there laid down as undoubted truths, including transubstantiation, the obligation of monastic

vows, clerical celibacy, and auricular confession, and were commanded to be believed on pain of death, without power of escape by abjuring errors once uttered ; so that if any person once denied the real presence, though he afterwards confessed his error and recanted, he was liable to be burnt.\*

The cruelties of Mary are known and are proverbial ; they have prevented us from reflecting how entirely her Parliament, so lately Protestant, supported her in them, and how far her sister went in following her example. It cannot be doubted that the Reformation in Elizabeth's reign was carried by force, even by military force, as far as the people were concerned ; for they adhered to the religion of their forefathers. Bishop Burnet, a witness wholly above all suspicion on such a point, is constrained to allow that she had to send over German troops in 1549 from Calais, on account of the Catholic bigotry of the nation at large. The use made of the Church revenues too deserves our attention. Henry VIII. was not the only sovereign who endowed great families out of this spoil. In Edward's time, Winchester and Canterbury suffered much for this purpose ; Exeter and Llandaff were impoverished, and Lichfield was stripped to endow Lord Paget. Somerset House was founded out of Church lands by the Protector. Cecil's estate at Burleigh was made out of Peterborough : part of Hatton's in Holborn retains the name which shows that it had belonged to Ely ; and Lord Keeper Puckering obtained it for a simoniacal prelate, that he might obtain a part of the estate on lease for himself.

Elizabeth, though friendly at all times to the Reformation, held the Puritans in far more hatred than the Catholics, on account of their republican propensities and their dislike of the episcopal discipline. It was against them that the Act compelling all persons to go to church under pecuniary penalties was passed ; an Act never yet repealed, and of late warmed into a noxious vitality, after being long torpid, in consequence of some magistrates having failed to convict some poor men of poaching.

The præmunire Act was extended so as to subject all the Catholics in the country to capital punishment for refusing a

\* A denial of the other five articles was, in the first instance, punishable with forfeiture and imprisonment, and with death for a second offence though followed by recantation.

second time to abjure their religion, a law so cruel, that the Queen ventured not to execute it generally. An Act punishing with death any publication containing seditious matters, or defaming the Queen, was wrested to include the offence of writing against the Liturgy, and Puritans suffered death under this strange perversion. Many Catholics also suffered under an Act making it high treason to import bulls, relics, or crosses; and others, after being tortured to confess having denied the Queen's supremacy, were executed.

The Anabaptists were also persecuted; many driven beyond the seas; some burnt for heresy; sixty-one clergymen, forty-seven laymen, and two ladies, suffered death in misery for being Catholics during fourteen years of this Queen's reign. To all these vile proceedings Elizabeth's Parliaments were as willing parties, or as callous instruments, as their predecessors in the time of Henry and Mary. The support therefore of the Reformation, whether by the father or the daughter, is rather to be regarded as an indication of that body's subserviency and the Sovereign's power, than any proof of the progress that had been made by constitutional liberty.

Upon the whole, however, there can be no doubt that the Parliament had become more independent and the Crown more under restraint in the reign of Elizabeth, high as were her notions of prerogative, and submissively as her reproofs were generally received; and the Speaker, Onslow, was justified in his remark upon the difference between our government and those of the continental kingdoms; justified by the fact, but also justified by the safety with which in her time the Commons could address language to the throne such as her father would never have permitted to be used in his presence. "By our common law," said he, "though there be for the Prince provided many princely prerogatives, yet it is not such as that the Prince can take money or other things, or do as he will at his own pleasure without order; but quietly to suffer their subjects to enjoy their own without wrongful oppression, wherein other Princes by their liberty do take as pleaseth them."

Let us now mark the main causes of the subserviency which so utterly disgraced the Tudor Parliaments, until under Elizabeth they gradually began to feel some sense of their duty, and to show, though but rarely and faintly, some spirit of resistance;



for we must lay entirely out of our view in considering this subject the violent Acts of Henry VIII.'s Parliament, authorising him to repeal statutes and giving his proclamations the force of law. These Acts were only, like the attainders in which they concurred with their master, indications of their submission to his will, and not real alterations effected in the Constitution, and enlarging the powers of the Crown. But the causes of that general submission, and the circumstances which enabled the Tudors to reign so absolutely in a limited Monarchy, were these:—

In the *first* place, the character of the Aristocracy, in whose hands the whole Parliamentary power was vested. They were a half-civilized, imperfectly enlightened, and exceedingly unprincipled body, just emerged from a state of feudal anarchy, repressed by the Sovereign's increased and constitutional authority, careless of what befel their countrymen at large, only anxious each for himself and his own retainers, and all willing rather to find protection in their individual power and following, than to seek it from the safeguards which the laws and institutions of a country provide for both high and low within its bounds. No tenderness for liberty, no feeling for the rights of the community, no regard for the laws could be expected from a body so constituted. The Lords were always found ranged on the side of power and of the prince. *Secondly*, the Commons were exceedingly affected, as, indeed, were the less powerful of the Lords, by the powers which the Sovereign exercised through the Council, the Star Chamber. Examples were occasionally made of punishing by fine and imprisonment discontented members; and the course of justice was, as we have seen, materially affected by the operations of the same force. *Thirdly*,—and to this I attach much greater weight, because otherwise the powers of the Star Chamber never could have stood against an united legislature—there was operating in favour of the Crown, and against all resistance, that principle which gives every established government the greater portion of its solidity, by preventing all effective opposition; that principle which enabled the triumvirs of France in 1793 to domineer through terror over both the Convention and the people for nearly two long years of suffering and crime. Men distrusted each other; every man feared to be made the sacrifice were he to move first; as no one in a

mob will rush willingly on, till forced by those behind him, upon a single individual armed with a pistol; because each knows that though it can kill but one, he may be the one. Who could venture to protest for a moment against any of Henry's worst schemes of profligacy and cruelty, when he felt that an attainder being suddenly propounded against himself should he oppose the attainder pressed upon the legislature, he must be the sacrifice to the honest discharge of a public duty? Nothing else can account for the obsequious and pusillanimous demeanour of the Parliament, first under the Plantagenets, but afterwards far more under the Tudors.

The personal character of these Tudor Princes entered for something into this account of their tyranny, because the main stay of their power was the terror which operated upon the Commons, with their distrust of one another, and their reckoning upon the Lords always taking the Sovereign's part. Accordingly we find them far more inclined to follow an independent course under Edward and the Regency than under any of the other four princes of that family. We also observe them kept down by dread of Elizabeth while she was in the vigour of her faculties and the height of her pride. The favourite subject of the monopolies had been somewhat broached by the Commons as early as 1566; it was very openly taken up in 1572; but the fear of her indignation afterwards made them press it very feebly till towards the end of her reign, when, her energy being impaired rather by the melancholy that clouded her latter days than by the hand of age, they could venture upon matters which at a former period they dared not broach.

## CHAPTER XXVII.

GOVERNMENT OF ENGLAND—THE STUARTS—COMMONWEALTH—  
RESTORATION.

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Contrast of James I. to Elizabeth—Divine Right—Error of Authors on this—Commons struggle for their Privileges—Slavish Conduct of the Judges—Impeachments by the Commons—Extravagant assertion of Privilege—Conflict between the King and Commons—Oppressions exercised by the Crown—Revolting Doctrines of the Stuart Princes—Character of Charles I.—Early Errors of his Reign—Favouritism to Buckingham—Baseness of the Judges—New Oppressions of the Crown—Long Parliament; its admirable Conduct at first—Petition of Right—Strafford's Attainder—Violence of the Parliament—Overthrow of the Constitution—Commonwealth—Causes of the Rebellion—Error of Romish Writers—Evils of suffering a Minority to rule through Terror—Cromwell's Usurpation—His Plans and Constitutions—Obliged to call a Parliament—Restoration.

THE bold, determined, impetuous character of the Tudors suddenly found a great contrast in the feeble mind and contemptible manners of James I., and though his capacity was far from mean and his acquirements were very considerable, both his abilities and his accomplishments were of a kind the least useful on the throne; consequently the genius of Elizabeth, peculiarly formed for command, was as manifestly superior to his, as the vigour of her masculine nature surpassed his paltry disposition. Men were not slow to mark the change in the hand that now held the sceptre; the statesman perceived it in a day; the Parliament showed that they were aware of it on the morrow of their meeting.

Accordingly, with this Prince began the real contest between the Crown and the Parliament, which ended in the full establishment of our free Constitution. A movement in this direction had been made in Elizabeth's time; towards the end of her reign it had become very perceptible; and no attentive observer could doubt that, even under the same race of vigorous and able tyrants who had long filled the throne, the increased importance of the towns from the progress of commerce, and the daily diminishing influence of the feudal aristocracy, as well as the gradual diffusion of knowledge, accelerated with the spread of free principles since the Reformation, would in time have occasioned the same great and useful struggle. But the change of the family,

and the character of its first sovereign, contributed much to bring on this conflict, and give it a turn favourable to liberty. This, however, was in no wise owing to any moderate views entertained by the Stuarts of their prerogative; on the contrary, they held this fully as high as the Tudors.

It has been remarked by writers on our Constitutional History, and particularly by Mr. Hallam, that, singularly enough, the family which held such lofty notions of Royal prerogative and rights of legitimacy (as they are now termed) should themselves have owed their succession to the very influence of which they most were jealous, deriving their sole title to the crown of England from the people, whose right to interfere with such high and sacred subjects they wholly denied. Perhaps this discrepancy between their title and their principles is more apparent than real. It is perfectly true that an Act of Parliament gave Henry VIII. the power of naming his successor, and limiting the Crown to any series of heirs whom he might choose to appoint in a will executed by himself. It is equally true that he named the Suffolk family, descended from his youngest sister, and passed by the King of Scots, issue of Margaret. Much doubt has been cast upon the point whether or not the will was signed by him; whether, as the lawyers say, the power was well or ill executed. The balance of evidence appears in favour of the due execution; and there was lawful issue of the Countess of Suffolk living at Elizabeth's decease. So far the succession of James appears to have been precluded by statute, and he only to have been let in by the voice of the Nation disapproving the Act of Harry's Parliament, which had, however, never been repealed, and by the recognition of his own first Parliament in a statute declaring his title. But there can be no doubt that the same persons who maintained the high prerogative doctrines of the Stuarts, would equally deny the right of Parliament in Henry VIII.'s time to set aside the elder or Stuart branch, and to substitute, by Henry's appointment, the younger. They regarded the title by hereditary succession as paramount to any legislative enactment. If any proof of this were wanting, surely it is furnished by the Jacobites persisting in regarding their Stuart Kings as the true and lawful Kings of England, after the Crown had been limited to a younger branch of the family, and possession held under that limitation for near a century. The inconsistency is thus rather apparent than real;

though the absurdity of the Stuart doctrine is as flagrant as if it were not irreconcilable with itself.

James, in his proclamation for summoning his first Parliament, had required that neither Bankrupts nor Outlaws should be returned. One Goodwin, who had been outlawed, was returned for Buckinghamshire. The Return was refused at the Crown Office, and Fortescue was elected in his stead. The Commons as soon as they assembled unseated him, and declared Goodwin duly elected. This brought on a controversy with the King; and the Commons asserting their undoubted privilege to decide upon all elections, it ended in a compromise that neither Goodwin nor Fortescue should sit. Immediately afterwards, a member arrested for debt was liberated by a summary application to the Crown, and an Act was passed declaring the privilege of Parliament, and indemnifying the Sheriffs and Gaolers for setting free all members so committed to their custody. Moreover, when the King upon one or two occasions would take notice of speeches and proceedings in the House of Commons, they drew up a full statement of their privileges; and as he had referred to the freedom of speech asked and granted at the beginning of each Parliament, they distinctly affirmed that it was their right, without any grant, and that their asking it was a mere form, and "words of manners only." He persevered in alluding to their proceedings, and they persisted in complaining of this as against their undoubted privileges.

But he on one occasion went much beyond this, and ventured to impose a duty on currants imported. One Bates, having imported without paying the duty, was sued in the Exchequer, where the Barons supported the King's right to levy the customs, and used arguments still more base and slavish than their judgment. The Commons took up the subject, and the King desired they would not interfere. They however maintained, in most explicit terms, their undoubted right to discuss every one grievance of the subject; and so effectual was their resistance, that when soon after he would have raised money by making victuallers pay for a licence to retail wines, he was obliged, by the representation of the Commons, to revoke his proclamation. It must be added, with some feelings of shame, that Lord Coke himself agreed with the Court of Exchequer in their judgment on Bates's case, though for very different and far less objection-

able reasons ; and in his Book he distinctly condemns the case as decided against law. (2 Inst. 57.) The Court, too, over which he presided, declared the issuing of proclamations creating new offices to be unlawful, on the ground that the Crown had no power to alter the law of the land.

The authority of Bates's case and of Lord Coke's concurrence had encouraged the King to levy customs without Act of Parliament at the out-ports—the absurd distinction being taken by the Judges between these and the Port of London and Cinque Ports. But the Commons strongly remonstrated against this proceeding as wholly illegal, and refused all supply until these demands were withdrawn. The consequence was an interval of six years before any new Parliament was called ; and, in the mean time, James was put to many shifts for obtaining pecuniary assistance. He was fain to ask loans from wealthy citizens as a favour ; and, failing to get supplies from this source, he had recourse to his well-known expedient, the sale of Honours. He invented the order of Baronets, and sold the title for 1000*l*. About 200 were created, but not much more than half were at first so disposed of. One St. John, who had incurred his displeasure by writing a treatise recommending men not to advance their money by way of loan, was imprisoned by the Star Chamber and fined 5000*l*.—a striking proof that even now, when the Commons had their attention strenuously directed to the Royal claims, and were occupied in maintaining the privileges of Parliament and rights of the people, they were not yet prepared for laying the axe to the root of the great evil, the illegal proceedings of that court. They, however, obtained from him an unlawful order, probably through that arbitrary court, prohibiting the publication or sale of a work which appeared, written by one Cowell, and asserting in the most absurd terms the absolute powers of the Sovereign and the insignificance of Parliament by the constitution of England. It must be added that in all these struggles the High Church party uniformly took part with the Crown, and against the Parliament ; and thus was begun that mutual enmity which half a century later overturned the Ecclesiastical establishment of the realm.

The attainders of individuals under the Tudors had formed the most hateful and disgusting part of their domination, and of the Parliament's pusillanimity. In James's reign the attacks

upon individuals were almost all grounded upon sound and just principles, and did great good to the Constitution. They proceeded not from the King, but the Commons, and not seldom were levelled at Ministers of the Crown. The right of impeachment had not been exercised since the Lancastrian Princes were on the throne. Now, all great delinquents were visited with its terrors. For the Commons impeached Mompesson of frauds and abuse, and oppressive use of patents he had obtained; Marshall, his accomplice; Barnet, a judge of the Prerogative Court, for corruption in his judicial conduct; the Bishop of Llandaff for bribery; and Middlesex for bribery and official corruption. It must be confessed that the Commons carried occasionally their privileges somewhat further. The grossest case of oppression on record in the history of Parliament, one not exceeded by any act of the most despotic of Princes, is Lloyd's; but religious zeal here mingled with their own privileges. The King was understood to be less warmly interested in his support of the Elector Palatine against the Emperor than suited the Protestant tastes of the Commons. This unfortunate gentleman, a Catholic, was represented as having used expressions disparaging to the Palatine and his wife—a charge which, if ever so fully proved, could in no conceivable way touch the privileges of Parliament. He was sentenced by a vote of the House to ride ignominiously on a horse with his face towards the tail, to stand in the Pillory, to be whipped from London to Westminster, to pay a fine of 5000*l.*, and to be imprisoned for life; and all of this iniquitous sentence he underwent, but the whipping.

This Parliament, the last in James's reign, closed with an open quarrel between them and the King. A remonstrance respecting his slackness in supporting the Palatine, his son-in-law, drew from him a severe reproof, in which he ascribed their freedom of speech to the Royal forbearance. The Commons took fire at this, and asserted in the loudest tone their absolute independence and supremacy. He was far from yielding; and dissolved them with a new reprimand—adding, however, that he should continue to govern by Parliaments. But as soon as they separated he committed several of the opposition leaders, among others Sir E. Coke and Mr. Pym, to prison.

While the Commons were thus establishing their power, and boldly facing the Crown, it is humiliating to think that the

Judges, from whom so much better things might have been expected, showed, with one single illustrious exception, the most base subserviency, and the most unblushing abandonment of principle. Being asked by the King if he had a right to stay any judicial proceedings as often as he deemed his interest or the prerogative of the Crown assailed, all, except Lord Coke, humbly testified their submission, to his demands, and in a tone of meanness and an abject spirit yet more disgusting than the answer itself. Little wonder then is it that we find Fuller, a lawyer, committed to prison, and there kept till he died—his offence being that he sued out a writ of Habeas Corpus for a client detained by the Court of High Commission; or Whitelock and Selden threatened with the like fate, and averting it by humble apology, their offence having been the just and true opinion they had given their clients that certain acts of the Government were illegal.

Notwithstanding these illegal acts, and notwithstanding the shameful dereliction of their most plain and obvious duties by the Judges, the liberties of the people gained prodigiously in James I.'s reign. Now it was that the Commons first entered into a contention with the Crown for the vindication of their rights, and for the restoration of those securities to the lives and properties of their constituents, which had repeatedly been declared to be theirs by law in the various renewals of the Great Charter, and in the laws extorted from the Plantagenets. Now it was that the encroachments of those Princes, and the still further usurpations of the Tudors, were exposed, and the only fit and effectual means taken to restore the constitution and extend its spirit through its details. The greatest abuse of all, indeed, the powers assumed by the Privy Council in the Star Chamber and High Commission, continued; but its operation was closely watched; and all men saw that the conflict which had begun between the Crown and the country under the guidance of an unskilful Monarch, on the one hand, obstinate, perverse, presumptuous, but of limited capacity for state affairs, and the great men of the day, the Cokes, the Wentworths, the Pym, must end sooner or later in a popular victory. The "universal fermentation," which Mr. Hume (Chap. XLV.) describes as about the beginning of the seventeenth century occasioned by the revival of letters, then first became operative in the diffusion of



knowledge among the people, at least among the bettermost classes, enlarged men's ideas, and by a necessary consequence led to discussions of political rights, and dissatisfaction with abuses of all kinds; and, fortunately for the cause of constitutional freedom, this was the very period chosen by the Stuart family and their infatuated adherents in Church and State for promulgating the highest notions of arbitrary authority, condemning all popular privileges, and setting the Sovereign above all human ordinances by a right claimed as inherent in the blood of Princes, and derived immediately from Heaven. The frankness with which these revolting doctrines were openly and explicitly proclaimed, although not at all greater than was shown by their Tudor ancestors, produced a far more strenuous opposition, because the age to which they were addressed was very differently instructed, considerable progress had even been made by the Parliament in an opposite direction, and the freedom of religious opinion inculcated by the Reformation was calculated inevitably to extend itself also to state affairs. It was another blessing derived from the same family, that their capacity was far inferior to their pretensions—that the unyielding obstinacy of their nature was supported by no skill, not always by adequate firmness in pursuing its object.

It was in these circumstances that the memorable reign of Charles I. began, and that the struggle between the Crown and the Commons descended to him from his father with that crown, and lined it with thorns.

In character he materially differed from his predecessor. More courageous, more manly, of more winning address, of less pedantic conceit, and, though not deficient in accomplishments, yet not priding himself on those which fit men rather for the contests of the college than for those of public life, he was, nevertheless, far less honest and sincere, more unforgiving, quite as selfish, and altogether as much imbued with the notions of his paramount rights and his contempt for those of the people. His private conduct was more pure, and his religious impressions more strong; but he as easily tolerated breaches of morality and decorum in others; and in religion he was as intolerant, with a leaning towards Popery, which was enlarged by an imperious and bigoted wife, and a profligate, unprincipled favourite (Buckingham), fondly cherished by him as he had been by his father,

recommended by none but superficial accomplishments and abandoned character, and who proved one of the chief banes of his early life.

His first measure in this warfare to which he was doomed must be allowed to have been as bad a one as was possible, for it was a trick; it deserved not the more respectable name of a stratagem. He caused the popular leaders to be named Sheriffs, that they might not be returned to Parliament; but the only consequence was their being chosen for other places. Thus, Coke, the avowed leader of the Opposition, was elected for Derbyshire instead of Norfolk, of which he had been named Sheriff. His next step was of more open violence, and according to the very worst example of past times, no longer safe to be followed. Digges and Elliott, two of the most distinguished friends of liberty, were cast into prison for words spoken in Parliament; for having taken part in the impeachment of the favourite. This ill-judged step was no sooner taken than retracted, on the House declaring they would proceed to no business until their members were released; and he was fain to confess that he had been mistaken. A peer too, Arundel, whom he had imprisoned, was released on the claim solemnly made by the Lords that none of their members could be arrested unless for treason, felony, or a breach of the peace. They gained another success on the important right of each Peer to have his writ of Summons, which had been refused to Bristol, and which was now issued on their remonstrance.

To screen Buckingham, whose fall he perceived was doomed, Charles now had recourse to a step which he repeated several times, in spite of the warning he each time received, that of dissolving the Parliament—the result inevitably being a new one afterwards elected with increased hostility towards the Royal authority which had put an end to the old. Money had been voted, but no bill passed; and he foolishly thought he might assess all his subjects to a loan of the amount voted, each according to the portion he would have paid if the subsidy had been enacted by law, requiring the names of these who refused their money to be reported before the Privy Council. This was followed up by pressing the inferior people to the Navy, and ordering only gentlemen to be committed by the Council. Five of these, including the illustrious Hampden, sued out their Habeas Corpus,

and the return being that they were detained according to the exigency of the commitment, the sufficiency of the return, and consequently the validity of the writ of commitment, came before the Court of King's Bench, the Judges of which, to their lasting disgrace, decided in favour of both. But the King was forced to call another Parliament, the third of his reign, and now was assembled that truly illustrious body to whose wisdom and fortitude we owe our liberties, in spite of the over violence by which its successors outdid its great example, and the inexorable tyranny of the faithless Prince with whom they had to deal.

Bent on his destruction, while yet the elections had not been finished, Charles, at the moment that he paid court to his subjects, by releasing persons from unlawful imprisonment, employed Commissions to raise money just as unlawfully, their orders being "to regard the necessity of the substance more than the form and circumstance;" in other words, the want of supplies for an impolitic war of the favourite's advising, rather than the illegality of robbing the people against law. The result was that famous proceeding, the Petition of Right, whereby the Lords and Commons obliged the King to declare the illegality of requiring loans without Parliamentary sanction, or billeting soldiers, or commitment without legal process, or procedure by martial law. When, however, they further required him to give up the right of levying tonnage and poundage, the infatuated monarch again had recourse to a dissolution, which was immediately followed by the imprisonment of opposition leaders. Elliott was prosecuted in the Court of King's Bench for words spoken in Parliament, and the Judges, as usual, servilely and profligately acquiesced, affirming the jurisdiction, and allowing a conviction—a judgment which was solemnly reversed by Writ of Error, as contrary to law, after the Restoration (1667). Other instances of judicial baseness were also exhibited on this occasion; but when the merciful King, the sacred Martyr, wished to have Felton put to the rack for the murder of his favourite, the Judges could not go quite so far; they declared torture to be illegal. A majority of seven to five soon after (1640) decided that the levying ship money was legal without consent of Parliament, in Hampden's case. But the Commons went a step further than their purpose required, as usually happens when in troublous times such strong measures are resorted to; they vi-

sited every word spoken or written in disparagement of their proceedings with the penalties of breach of privilege, thus at once declaring themselves above all censure, and founding their claim of absolute power upon a fiction of absolute infallibility. They even treated respectful petitions \* as breaches of privilege.

The oppressions of the Star Chamber were multiplied at the same time. A greater number of punishments were inflicted, and severe ones, perfectly odious and revolting to the feelings of mankind, especially when compared with the station of the parties and the nature of the charges, were more frequent than even under the Tudors. Thus not only the pillory, but whipping, slitting the nose, and cutting off the ears, were ordinary inflictions; and fines, so heavy as sometimes to reach 12,000*l.*, were exacted, of which the greater portion always went to the King, thus forming an important item of his revenue. Of the kind of crimes thus visited we may form an estimate from this, that one person paid 8000*l.* for having said "Suffolk is base born," and that Laud made Bishop Williams be condemned to pay the like sum, of which 3000*l.* went to himself as a compensation, for that Prelate having written a letter in which the Primate was turned into ridicule by a single expression. He was likewise imprisoned three years for the same jest, and for being so partial to it as to refuse apologising to the indignant metropolitan. For some libel on the Church Leighton was whipped, pilloried, had his nose slit and his ears cut off, and was condemned to prison for life; Lilburn was whipped and pilloried; and Prynne suffered two several inflictions, the second of which cut off whatever of his ears the former had spared.

The discontent occasioned by such proceedings, and the impossibility of obtaining the necessary supplies by all the violence to which he had had recourse, and with all the support he derived from an unprincipled bench of Judges, forced Charles to assemble Parliament, after an eleven years' intermission. It met in April, 1640, and showing great moderation, united with as much firmness as had distinguished its predecessor, it was dissolved after it had sat three weeks. The increased rigour of his illegal exactions soon increased the prevailing discontent, in which his favour towards the religion of his Queen, and its professors, especially those in her service, entered largely; and after

\* *Parl. Hist.*, 1147—1188.

in vain seeking to evade the necessity he most feared by assembling a great Council at York of all the Peers, he was obliged by their advice to summon that Parliament which in a short time overthrew his authority and brought him to the block.

The first proceedings of this celebrated assembly were admirable in every respect, and marked by equal firmness and moderation. They passed a bill to secure the calling of Parliaments every three years, and prevent any interruption for more than that period of their authority: the Lords to issue writs if the Crown refused; the Sheriffs if the Lords refused; the Electors if the Sheriffs refused. This triennial bill likewise prohibited the King from dissolving without its consent, until it had sitten fifty days. The judgment in Hampden's case was then reversed; all levies of customs, and generally all imposts, without consent of Parliament, were declared illegal, and strictly forbidden; all pressing of soldiers, unless in case of actual invasion; and as the crowning work, without which neither Parliament nor people could be safe for an hour, the Star Chamber and High Commission Courts were for ever abolished, by depriving the Privy Council of all jurisdiction in criminal matters, and confining it to the more necessary operations of police, and commitment for trial by due course of law. The King submitted to pass all these important bills, but he interfered with the debates upon them, and this was so far resented by the Parliament that no instance is known of that offence against privilege being repeated.

These were great and glorious achievements, and these must bound our praise of this renowned body. Their whole subsequent proceedings were framed, possibly intended, to alter the form of the Government, and not to protect it from attacks. The impeachment of Strafford alone of these violent acts leaves a doubt on the mind whether it were justified or not. The destroying him, and by attainder, was plainly without any excuse. The ruining him in the King's estimation, or rather the preventing his future employment by intimidating his master, was perhaps necessary from his talents, his courage, his influence with Charles, and the part he had since his apostacy openly and zealously taken against the people. His tyrannical and unconstitutional proceedings furnished a sufficient ground for convicting him of high crimes and misdemeanors. But the pretext that it was necessary to take his life because there was no other

way of securing the people against so powerful an adversary was exactly the reason which Henry VIII. would have given for destroying his victims ; the manner of accomplishing his destruction was borrowed by the Parliament from the example of that tyrant ; the right which they had to destroy him, if grounded on their fears of his power and talents, was no better than Henry's right to put any formidable opponent to death ; and the shameful submission of Charles, contrary to every principle of duty and conscience, was exactly a counterpart of the subserviency of the Parliament to his despotic predecessor in passing his bills of attainder.\*

The other acts of the Long Parliament are without excuse and placed beyond any question. The Act to prevent a dissolution without their own consent was an open and audacious assumption of supreme power, not by the people, but by a number of individuals, who thus made themselves absolute, and founded an oligarchy rather than a democracy in their own persons. It was passed with a truly revolutionary speed, being brought in upon the 5th of May, carried to the Lords on the 7th, and agreed to by them on the 8th ; so that in three days the whole Constitution was changed, and the King's power became little more than nominal. The Bishops were then excluded from Parliament ; and the King's assent to this was his last concession. What followed was done by main force, and on the eve of taking arms, or in the midst of that din which proverbially puts all law to silence.

The immediate causes of the rebellion were, *first*, the religious zeal, or rather fury, excited by the encouragement which the King and Queen gave to Popery, and which was greatly magnified, at least as concerned him. The alarm of the Protestants at the danger to their religion, not only drove many churchmen into the communion of the Puritans, but led the Parliament to the most preposterous assumption of privilege. Thus they treated as a question of privilege any alteration in the ceremonial of worship, declaring all "new-fangled ceremonies" to be a breach of their undoubted privileges. This was, of course, levelled at Laud, whose tendency towards Popery closely resembled that of a powerful body of the clergy

\* Mr. Hallam falls into the great error here pointed out, in his remarks upon Strafford's case.

in our own times.—In the *second* place a conspiracy was discovered of some leading persons in the King's party, to march the army to London and subdue the Parliament; the petition was even prepared, which the army numerously signed, praying to be heard by the Parliament; and Charles had the incredible folly to countersign it, but retracted before it could be acted upon, instead of keeping aloof from the movement until it could be successfully executed.—But in the *third* place, and which more than all the rest hurried on matters to extremities, he took the insane step of entering in person the House of Commons, and claiming the surrender of five members, the leaders of the party opposed to him, but who had the whole Commons and nearly the whole Lords for their followers. He had the day before desired the Attorney-General to prosecute them and a popular Peer for high treason, the charge being grounded on their Parliamentary conduct, in which they had all the Parliament for their accomplices. Even Mr. Hume, the staunch apologist of Charles and all the Stuarts, treats this step as an indiscretion beyond “the fondest wish of his enemies;” as a course entered on “without concert, deliberation, or reflection;” as an act “the prudence of which nobody pretended to justify” (Chap. LV.). Lord Clarendon confesses that this unwarrantable and infatuated act alienated the generality of those who were beginning to judge more favourably of Charles; probably alarmed by the growing violence of the Parliamentary proceedings. Dr. Lingard, who repays the favour of the Stuarts towards his Church by extreme partiality for them, admits it to have been a proceeding equally blamed by his friends and his enemies.\* That it led immediately to the vote which vested in

\* The extreme prejudice under which this able and respectable author writes is a great drawback to his work. His history is far more learnedly and carefully composed than any other of our country; and yet, owing to his partiality, it leaves unsupplied the blank admitted by all to have been left by Mr. Hume: for we meet in every one part of his narrative with the apologist or the advocate of the Pope and Popery. So Romish a history could hardly have been supposed possible to have been written in this country, and by a person of the most respectable character. As for the Stuarts, Mr. Hume, with all his prepossessions, and his habitual “love of kings and queens,” must be admitted to have been very far surpassed by Dr. Lingard. The former had too masculine an understanding to let Mary's conduct pass unproved. The latter carries his partiality to the Romish Queen so far that he not only acquits her of all knowledge of Darnley's murder, but of all belief that Bothwell was an object of suspicion, and of all blame respecting his mock trial and scandalous escape; nay, he cannot even bring himself to censure the marriage itself,

Parliament the nomination of the Militia officers,—in other words, the command of the army,—cannot be doubted; and this was the commencement of the Civil War.

It is wholly beside the design of this work to follow the history of the great events which that war produced, or to contemplate the extraordinary display both of civil and military genius by which it was marked. A revolution which unsettled the whole finance of the state, and changed in almost all particulars the established order of things, could not fail to force as in a hotbed the talents and the virtues, as well as the vices and the weaknesses, which peaceful times and regular government either nip in the bud, or stint in their growth, or cast into the shade, when they chance to attain maturity.\* But it is equally certain that in England, as in France a century and a half later, a vast majority of the people were averse to the change which overthrew the monarchy; that the republican party, utterly inconsiderable at first, was always a much smaller minority than in France; that the extremities to which the leaders went against the King found very few supporters among the people, and were disapproved by a majority of the Parliament itself, from which a military force in one day expelled two hundred of its members, leaving the minority in possession; and that the influence of the two most powerful motives which can affect the conduct of nations, religious fanaticism and terror, was required to make those violent proceedings be patiently borne. The hatred of the Church abuses in France supplied there the place of that fanaticism, and the terror was exercised in a much greater excess. But in both revolutions the success of a party was secured by similar means, and in both the indolence and timidity of the well-disposed enabled the enemies of the people to prevail. The same moral is to be drawn from both these sad tales alike. It teaches all men that he who permits injustice and cruelty to triumph, when by doing his duty to his neighbour he could de-

looks upon it as quite a becoming thing for a woman to marry a few weeks after her husband's violent death, and seems quite satisfied that a Queen can be married by force: but, worse than all, he appears absolutely to be the apologist of Bothwell himself, and gives an account of his latter end wholly different from all other writers.

\* They who are fond of representing as revolutionary the changes operated in our Government by the measures of 1831 and 1832 should reflect that there is wholly wanting, among other things, this one indication of a revolution. Hardly any men of talents have by that revolution been cast up to the surface.



feat them, shares the guilt though he may not share the spoil; and that the risk of being overpowered in the struggle for right is not an excuse for inaction which can satisfy any but the most callous feelings and the most easy conscience.

The abolition of Monarchy was complete—it was declared treason to give any one the title of King without Act of Parliament—the House of Lords, as well as the Crown, was set aside—and the supreme power, legislative as well as executive, remained vested in the House of Commons, now attended by less than a hundred members, and wholly under the influence of the army. A council of forty-one, three-fourths of whom were members of the House, was appointed for a year to preserve the peace, dispose of the forces naval and military, and represent the country with foreign states. A new seal, representing the Commons, was made and intrusted to three Commissioners; and an oath to be true to the Commonwealth was directed to be taken by all persons in office. Half the Judges took it; the others resigned; the former made it a condition that Parliament would engage to maintain the fundamental laws of the realm. To this the House agreed, and the Judges never seem to have reflected that the Kingly power runs through all the jurisprudence of England, from the foundation upwards. New writs were issued to fill up vacancies which had reduced the Commons to a seventh of their number, and 150 at length were found to compose the House; but it was seldom that fifty could be got to attend, and hardly ever 100. Five or six eminent loyalists were tried and executed, but the reign of the Commonwealth was little stained with blood. Their puritanical rigour made them denounce severe penalties against offences which no penal law can ever well or safely reach; acts were passed punishing incest and adultery with death, and fornication with three months' imprisonment—acts the severity of which, as might easily be foreseen, prevented their execution. But the public prayer for general reformation of the law was attentively listened to, and an important commencement was made of amendment in the system and in the practice of our jurisprudence. A full inquiry was instituted into financial abuses and frauds upon the revenue, especially in the management of forfeited estates. These must have been of importance, as in one year (1651) seventy individuals, chiefly of rank and fortune, were forfeited for their ad-

herence to the King. The year after, previous to the fatal battle of Worcester, which extinguished the hopes of Charles II., his followers were also attainted; 71 first, and then 682 were thus punished; all however being suffered to redeem at one-third of their value. The Catholics were persecuted, but only one suffered death. The Presbyterians had been far worse persecutors than the Independents, insisting on uniformity of worship. But the Independents showed fully as much rapacity, and it was reckoned that the income of Catholics in the hands of sequestrators amounted to above 60,000*l.*-a year, though only two-thirds of England were included in this calculation. The rigour of their measures was not confined to the rich and noble; their violence descended to artisans, peasants, and menial servants.

The Long Parliament had naturally become unpopular, both from its duration of eighteen years, from the expulsion of a large portion of its members, and from its subserviency to the army and their chiefs. Cromwell's usurpation, therefore, was acceptable to the nation; but he had little other hold over the people than what their dislike of Parliament and the dread of his military power gave him. He collected about 120 men of puritanical and sanctified habits, chosen by himself from a greater number returned by different congregations, and to them he entrusted the whole Government. This ghostly body (commonly called Barebones' Parliament), how ridiculous soever in many of its proceedings, showed no little wisdom in prosecuting several important reforms, and correcting some glaring abuses; it also showed some disposition towards independence in the exercise of the powers conferred upon it. This of course displeased Cromwell, and on dissolving this body, and taking upon him the executive Government, under the title of Protector, as tendered to him by a party of its members, he proclaimed the Instrument of Government in forty-two articles, vesting the legislative power in the Protector and Parliament, no dissolution of which could take place, without its own consent, in less than five months. The Protector had the command of the army and navy; the power of making peace and war, with his Council's consent; the power of appointing the great officers of state, with consent of Parliament; and the successors of the Protector were to be named by the Council. The Parliament consisted of 460

members, chosen by the larger boroughs, exercising their former rights of election, and by persons in counties possessed of 200*l.* in any kind of property: 400 were for England, 30 for Scotland, and as many for Ireland. It met; and finding after five months' trial that the members were far from being very pliable to his wishes, he dissolved it, and alarmed by a royalist movement in the west, delivered over the kingdom to eleven Major-Generals for as many districts, who were commissioned to levy a tax of ten per cent. which he imposed on all royalists. He also continued a duty on merchandise beyond the time limited by law. Some refusing to pay this illegal impost were fined by the collectors, and sued them for damages. The Judges showed their wonted subserviency and pusillanimity, and Cromwell sent to the Tower the counsel for one party who sued. He also erected a High Court of Justice, by which several of his adversaries were condemned to death, and suffered accordingly. The Government was now a military despotism, and it is certain that nothing but Cromwell's brilliant success in all his foreign expeditions, and the dread of the Stuart family being restored, could have maintained him on his usurped throne.

After an interval of about two years he was obliged to call another Parliament; the Scotch and Irish members were submissively obsequious; the English so little disposed to obedience that he previously examined the returns, and by an act of violence excluded about ninety of them on pretence of their immorality. No one was suffered to enter the House, guarded by his sentinels, but those who had a certificate from his Council. The result was an obsequious assembly, which addressed him to take the title of King, and agreed to many amendments on the Instrument of Government. He refused the Crown, as is well known; but the amendments of the Instrument gave him the power of naming his successor, and of naming an Upper House of not more than seventy nor less than forty members. In virtue of this sixty-two members of the Lower were summoned to the Upper House. The removal of his principal supporters from the Commons weakened his influence in that House, and he was soon obliged to dissolve this Parliament, the fourth that he had so dismissed, and the last he ever called.

It has sometimes been considered by historians that the first form of Government under the Protector, that of the Instrument,

was republican, and the second, under the petition and advice, was monarchical; and Mr. Hallam is of this opinion. But except in the power of naming his successor, and the institution of the Upper House, the first was really as monarchical as the second. The Protector's death, and his son Richard's incapacity to hold his office, led, after an interval of eighteen months, during which the Government was at one time in the hands of a Council of general officers, to the restoration of Charles II., without any security whatever being taken for his constitutionally governing the kingdom, beyond the effect which his father's fate and his own sufferings might be expected to produce upon his mind.

## CHAPTER XXVIII.

## GOVERNMENT OF ENGLAND—THE STUARTS—REVOLUTION.

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Reigns of Charles II. and James II. the same in a Constitutional view—Characters of these Kings—Policy of Charles—His Alliance with France—Escape of the Country from Subjugation—Clarendon's Profligacy—Revolution delayed by Charles—Popish Plot : Exclusion Bill—Alarming Change of Public Opinion on James's Accession—Base Conduct of the Lawyers—Selfish Conduct of the Church—James's Attacks on the Church—Banishments—Narrow Escape from absolute Monarchy—Revolution : it originated in Resistance.

THE history of the Constitution from the Restoration to the Revolution, although usually viewed as divided into two portions, the proceedings of Charles II. and those of James II., is in fact properly to be considered as one and the same ; the course of events being uninterrupted, the proceedings of all parties being the same, and the conduct of the brothers only varying in the accelerated pace with which the more honest and bigoted of the two hurried matters to a crisis. The only real difference in the two reigns is, indeed, to be found in the personal characters of those Princes ; the one indolent, careless, unprincipled, loving his ease rather than anxious about power, unless as it might secure him from interference with his pleasures, or save him from the equally ungrateful interruptions of business ; not at all envying others their freedom so he might only enjoy his own ;—the other a stern ruler, jealous of his prerogative from religious as well as political principle ; a furious bigot from conviction ; little averse to labour, and fearing no risk in the pursuit of his object ; ever ready to sacrifice a temporal to an eternal crown, and though affecting much regard for his word, yet unscrupulous of breaking it when its strict observance stood in the way of his predominant passion. Though in religion Charles had gradually become a Romanist, he never was prepared to avow his conversion, or to make any sacrifice for his faith ; his religious principles hanging almost as loosely about him as his private.

But James, though a rigid devotee, confined his self-restraint to matters of faith and the promotion of his Church, having lived at all times the same licentious life with which his brother and the rest of the Cavaliers, combining party feeling and personal indulgence, had debauched the English morals and outraged the feelings of the puritanical classes, even after their restoration to power.

It not only little suited Charles's habits to risk what he termed "going again on his travels," in order to battle for Prerogative and Popery, as James would have had him do; but he even would himself have preferred ruling by Parliaments as the easier course to pursue, could he only have found them reasonably tractable. He had no mind, as he told Lord Essex, to sit like a Turk and order men to be bow-stringed; but then he "would not have a set of fellows spying and inquiring into all his proceedings,"—and some laws which he found established he openly avowed his detestation of, declaring for example that he never would suffer any Parliament to be assembled under the famous Triennial Act of 1641. This was accordingly repealed. Still he tried how far he could go on amicably with such assemblies; and it was only when he found they refused him money, and would inquire into the public conduct of his Ministers, that he threw himself into the arms of France, made his power and influence wholly subservient to the profligate ambition of Louis XIV., received regular supplies of money from him to evade the necessity of meeting his people's representatives, bartered for this price at once the honour and the policy of the country, and entered into a shameless conspiracy both against the liberties of Protestant Europe and the Free Constitution of his own kingdom. It is manifest that had the English Patriots in 1670 been apprised of his proceedings, the Revolution never ought to have been delayed an hour; the calling in of William at that time would have been on every principle equally justifiable; and the expulsion of the restored family would have been an act still more necessary for saving both the liberties of Englishmen and the independence of their country; for that which James's proceedings never even threatened, was absolutely sacrificed by Charles—the national security as against France.

For a long time doubts were entertained by many and affected by some of Charles's criminality; nor were these wholly re-

moved until the publication of a secret treaty entered into with Louis XIV. in 1669, made all further denial of the conspiracy impossible. He thereby stipulated for a regular pension of 200,000*l.* a year, equal in value to half a million at the present day, and 6000 men; in return for these means of both governing without Parliament and overpowering all resistance from his subjects, he became party to a plan of partition upon a scale not exceeded by the northern powers in the case of Poland a century later, and to whom indeed these infamous transactions may well be considered as having served for a model. France was to seize the larger portion of the United Provinces, while England should have the greater part of Zealand, with Ostend, Minorca, and part of the Spanish provinces in South America; a Bourbon prince occupying the Spanish throne, and abandoning part of the Spanish empire as the price of his quiet possession. It is worthy of observation, as fixing upon Louis XIV. still more incontestably the invention of the Partitioning system, that he had twice three years before entered into a similar scheme with the Emperor for dividing the Spanish dominions. The inequality of the conditions had made the Emperor abandon this notable project; he perceived plainly enough that while Louis was to occupy the Peninsula and the Dutch provinces at his ease, the Emperor would have no part of the spoil that he did not win by force of arms.

It was certainly fortunate for this country that the suspicions raised in Louis's mind by the vacillating conduct and apparent bad faith of Charles prevented the prompt performance of the conditions thus entered into. Had a well-appointed French army entered England, while abundant supplies of money supported the tyrant, he had only to keep on gratifying the Established Church with means of oppression towards the Dissenters, and to remain wholly inactive in his support of the Catholics, and his work of usurpation was complete. The abominable acts excluding all non-conformists from corporations, and preventing them from ever coming within five miles of any corporate town, had won prodigious favour in the eyes of the clergy; and Charles had no such bigoted zeal for the religion which he secretly had embraced, or rather which he was in the course of adopting, as to risk "going upon his travels again," by giving it open and offensive protection. Add to this, that he had shown a truly

regal facility of abandoning his oldest and ablest servants, when Clarendon was impeached, suffering him to be declared guilty of treasons that he never had committed, because he timidly or prudently fled from an accusation of high misdemeanors of which he was undeniably guilty. His sending persons to remote and even foreign prisons, where they lingered without a trial for years until his fall; his accession to the French Alliance, and his procuring for Charles pecuniary supplies to preclude the necessity of meeting Parliament; were crimes of a deep dye, how little soever they could give his profligate and ungrateful master a pretext for leaving him to his fate. His detestable conduct on the occasion of his daughter's marriage, when he besought the King to refuse his consent, and declared he had rather she were treated as a strumpet, or put to death for a conspiracy against the prerogative, than that the Crown were sullied by such an alliance, though it be an offence incomparably less heinous to the State, has more than all his other crimes fixed upon his memory the just scorn of all good men in after ages.

In carrying on his Government two things were to be remarked of Charles, in both of which he differed extremely from his brother, and accordingly prevented the Revolution from taking place in his time, towards which, however, all things manifestly tended. He showed much address and temper in avoiding difficulties, which he seldom if ever met in front or endeavoured by force to surmount; and he displayed no obstinacy nor even firmness in the pursuit of objects, which so careless and self-indulgent a nature little regarded. Thus, although it cannot be supposed that he gave implicit credit to the Popish Plot, and most likely disbelieved it altogether, he yet contrived to keep a certain neutrality through the whole of the excitement into which it threw the nation, and was able to take advantage of the reaction which succeeded when the wretches who had deceived the people so successfully pushed their attempts a step too far, and accused those connected with the Royal Family. But his want of steadiness was apparent when, after issuing his declaration suspending the penal laws on the assumption of a prerogative to legislate absolutely in ecclesiastical matters, he was fain to withdraw it upon the anxious remonstrance of the Commons, alarmed, perhaps, more for their religion than their liberties. The extreme



unpopularity of the Duke of York on account of his religion had given rise to a bill for excluding him from the succession. Charles used all his influence against it, and succeeded in throwing it out when it came to the House of Lords. The Duke himself was fully resolved, had it passed, to have tried even the desperate extremity of civil war rather than submit to the law; declaring to Barillon, the French Ambassador, that there remained no other means but this of restoring the Royal authority in England. Yet so bent upon taking security against his bigotry were even those who chiefly opposed the Exclusion Bill, as Halifax, that they framed as a substitute for it another bill which entirely changed the form of the Government, providing that, on a Catholic succeeding, the veto upon bills should cease, all civil and military offices be bestowed by Parliament, and a Committee of both Houses sit during the prorogation. It may further be cited as a proof of the excess to which Anti-Catholic alarm was carried, that, early in 1680, the Commons passed a unanimous resolution declaring the Fire of London to have been the work of Papists, with a design of destroying the Protestant religion; and excluding from a seat every one who should accept any office under the Crown.

In the whole history of human weakness there is no parallel to be found for the sudden change which speedily after came over the nation and its representatives. Whether the extremities to which they had been carried during the plot, or the violence which had been shown against the Duke of York, or the natural alternations of fickle and ill-informed men composing the multitude of all nations, or the shameful zeal displayed by the Established Church in vituperating the conduct of the late Parliament, or a part of all these circumstances, be the reason, certain is the fact, that hardly had the session closed when from one end of the island to the other there burst a cry loud and continual against all that the Parliament had done; and an universal disposition was disclosed to suffer whatever assaults upon liberty the prerogative of the Crown might make. The corporation of London, threatened with disfranchisement by a *quo warranto* issued against its charter, and aware of the habitual subserviency of the Judges, was glad to accept any terms that were offered, and submitted absolutely to the dictation of the Crown. The same base and pernicious example was followed in the other cor

porate towns. The late King's death in the bosom of the Romish Church, and the ostentatious display of his religion by James going openly to mass in Royal state, failed to open men's eyes and alarm their religious fears. He ventured early upon calling a Parliament, and a revenue of 2,000,000*l.*, equal to 5,000,000*l.* at this day, was settled on him for life, with 700,000*l.* a year for supporting a standing army. An address on behalf of the Penal Laws was altered on a suggestion that its expressions might give offence to the King. A bill passed one House at least, and that the people's House of Parliament, declaring it high treason to make any motion for altering the order of succession—the very House which a few years before had passed a bill to exclude the reigning monarch for ever and bestow the Crown as if he had been naturally dead. It seemed a most superfluous plan which the profligate Sunderland had formed to dissolve the Parliament during the King's life, and trust to supplies from France in case any extraordinary occasion for them should arise. James, so lately the object of all men's dread and aversion, was now extolled for his courage, his adherence to his promises, his patriotic services to the country, his patience under the late persecution, which had forced him to reside abroad; so that he became now, to use Lord Lonsdale's expression, "the very darling of all men."

Meanwhile, notwithstanding his promise to rule constitutionally, and his pluming himself on being a man of his word, he began his reign by declaring permanent the customs which had been voted for a fixed time. He assumed the power of dispensing with the penal laws, and issued a "Declaration for Liberty of Conscience" on that ground, taking care all the while to gratify at once his own monarchical dislike of the Non-conformists and the Church's prejudice against that body, by joining in severely persecuting them. In Scotland, where the Crown's prerogative was always more restricted than in England, he suspended the penal laws, as he stated, "by virtue of his sovereign authority, prerogative royal, and absolute power, to be obeyed without reserve by all subjects;" and for these acts the whole country, both counties and towns, poured in their warmest addresses of thanks. The gratitude of the Spanish mob, actuated by their priests and fired with superstition, was never in our own day more eagerly displayed for the restored

blessings of despotic government than was that of the English people in 1686 and 1687 for the arbitrary rule of James II.

Now was exhibited above all the base sycophancy of the lawyers, rendered more disgusting by the learned garb in which it clothed the vile language of crouching slaves; their subserviency the more glaring as it was the more pernicious and the more infamous in the more elevated positions of the profession. Now were seen the Benchers of the Middle Temple first hailing with delight the earliest act of the tyrant's reign, his levying money without consent of Parliament, for which wholesome exercise of the prerogative those sages of the law humbly and heartily tendered him their thanks. Again, the raptures of the same vile body knew no bounds when James, spurning himself all bounds, assumed the full dispensing and suspending powers. They averred that the Royal prerogative is the very life of the law, gratefully thanked him for asserting it, declared it to be given by God, and beyond the power of any human tribunal or authority to limit, and vowed to defend with their lives and their fortunes the grand truth, *a Deo rex—a lege rex*. Then, too, were seen the whole twelve Judges, save only one, declaring the right of the King to dispense with penal statutes, most solemnly made for the purpose of restraining his power; a Pemberton wresting the rules of evidence, to the sacrifice of innocent persons hateful to the Court; a Jefferies campaigning in the north against all corporate rights, in the west against all dissenters from the doctrines favoured by the Prince, and causing streams of the purest and most innocent blood in the land to dye its furrows that he might do his profligate employer's butchery, pave the way for absolute monarchy, help the overthrow of the national religion, and meanwhile provide convicts to be spared by redeeming their lives or their exile with money to meet the cravings of a profligate and insatiable Court. A Parliament, however, seemed still wanting to give the Catholics their establishment in the form of law; and to prepare for this Regulators of Corporations were commissioned to examine all their titles and all their acts, and to new model their structure under the threat, amounting to inevitable certainty, of judicial sentence if they resisted.

Happily the moonstricken Prince had gone a step too far. He had done in a month or two what if a year or two had been con-

sumed in doing might have been unresisted. He had expelled the members of one college for being Protestants, named a Catholic principal of another, and prosecuted seven Prelates for representing against his Declaration appointed to be read in all Churches. The Church had mainly been the cause of his excesses. The declarations of the University of Oxford some years back against all freedom of discussion and in favour of absolute government, followed up by their slavish submission at his accession, and the zeal with which the clergy had everywhere taken his part, running down all his opponents, and especially the Protestant Parliament last held in his brother's reign, had not unnaturally induced him to believe that he might rely on their neutrality, if not on their help, in all his designs. In truth he had persuaded himself that there was no substantial difference between his faith and others; for he had been entirely converted to Romanism by reading the controversial writings of the English Divines in the school of Laud; and it must be admitted that, like a certain sect of the Anglican clergy in our own day, the bounds which separated that school from Romanism were very difficult to trace. However, he reckoned on their adherence in vain. Suddenly Oxford led the way in deserting him, as she had led the way in seducing him. The communication had now been opened with the Prince of Orange. James saw that he must fight for his crown; and though he prepared himself by the measure of drafting a great number of Irishmen into his army, men prepared to fight for any cause or any person, the precaution was taken too late; the Bishops were acquitted, even the Judges now venturing to do their duty; the army refused to quit the Church; the clergy rallied in defence of their benefices, and their pulpits, and their faith; the country declared generally against the King, and for the Prince. A convention first, then a Parliament, after much subtle discussion, which we have explained at large in the First Part (Chap. II.), declared the throne vacant, and setting aside James's children, as well as himself, except the two Princesses, Mary and Anne, who had gone over to his enemies, settled the succession to the Crown upon William and upon them, and it was afterwards further limited to the descendants of James I.'s daughter, married to the Elector Palatine. This Revolutionary arrangement, grounded entirely upon the will of the people in a state of resistance to their

hereditary rulers, is the whole foundation of the title by which the House of Brunswick now enjoys the Crown. Cavils have sometimes been attempted as if there had been no actual resistance in 1689, and they are only worthy of those antiquaries who deny a conquest in 1066, and read conqueror, acquirer. There had been arms taken in almost all parts of the country; but especially and on a large scale in Yorkshire, Notts, and Cheshire. There was a foreign army in the country, for no other purpose than to put down all attempts on the King's part; his troops for the most part joined the Prince; and by resistance to James he was deposed.

The form of words used out of regard to tender consciences and legal niceties in the Acts of the Convention offering the vacant throne, and of the Parliament offering the sovereignty for William and Mary's acceptance, is wholly immaterial. The Abdication was known and felt by every one to be constructive, not actual; James was well understood to have returned to London as King, and never by any act or word to have resigned the Royal authority which he claimed by hereditary title. But the people had rejected him, and their representatives held him to have vacated the throne, because he had been guilty of acts which justified them in deposing him. Moreover, suppose he had formally abdicated, he could not prejudice his son's title to succeed upon the vacancy which his resignation made. But the same power—the will and voice of the people—which had pronounced the throne vacant in spite of James, set aside the title of his son; called to the succession William, who stood five or six off, and by the course of nature could not easily have hoped to succeed; and then made the Crown hereditary in the daughters of James, living his son, and afterwards limited it to a remote branch, excluding that son's issue.

Nothing can be more clear, therefore, than that the whole proceeding was Revolutionary; that the change was effected by the Resistance of the people to their sovereign; that his assent was neither obtained nor asked, nor in any way regarded; and that the supreme power having been forcibly seized by the nation, was used to install a new chief magistrate in the throne.

## CHAPTER XXIX.

## CONSTITUTION OF ENGLAND.

Resistance the Foundation of our Government—Necessity of keeping this always in view—Security derived from the late Parliamentary Reform—Universality of the Mixed Principle—Apparent Exceptions—Only real Exception, Privilege—Evils of that Doctrine; its Abuse—Conduct of the Commons—Recent History.

Outline of the Constitution—Prerogatives of the Crown; Extent; Limits—Substantive Power of the Sovereign—Hereditary Principle—Errors on the Regency Question—King's influence in Parliament—Lord's House—Claims of the Commons: Taxation; Elections—Peerage—Large Creation of Peers; Crisis of 1832—Prelates; Convocation—Judicial System—Independence and Purity of Judges—Security of the People—Parliamentary Superintendence; Meetings; Press—Vigour of the Executive—Resources of the Country called forth—American Government—Three Defects in the Parliamentary Constitution—Bribery—Power of Adaptation to Emergencies—Extraordinary Powers; Habeas Corpus Suspension; Alien Act; Restraint of Meetings—Errors of Bentham School on unconstitutional measures—Writers on the English Government.

THE National Resistance was not only, in point of Historical fact, the cause of the Revolutionary settlement, it was the main foundation of that settlement; the structure of the government was made to rest upon the people's Right of Resistance as upon its corner stone; and it is of incalculable importance that this never should be lost sight of. But it is of equal importance that we should ever bear in mind how essential to the preservation of the Constitution, thus established and secured, this principle of Resistance is; how necessary both for the governors and the governed it ever must be to regard the recourse to that extremity as always possible—an extremity, no doubt, and to be cautiously embraced as such, but still a remedy within the people's reach; a protection to which they can and will resort as often as their rulers make such a recourse necessary for self-defence.

The whole history of the Constitution, which we have been occupied in tracing from the earliest ages, abounds with proofs how easily absolute power may be exercised, and the rights of the people best secured by law be trampled upon, while the theory of a free Government remains unaltered; and all the institutions framed for the control of the executive government,

and all the laws designed for the protection of the subject, continue as entire as at the moment they were first founded by the struggles of the people, and cemented by their labour or their blood. The thirty renewals of Magna Charta—the constant and almost unresisted invasions of the exclusive right of Parliament to levy taxes by the Plantagenet Princes of the House of York—the base subserviency of the Parliament to the vindictive measures of parties, alternately successful, during the troublous times of the Lancaster line—the yet more vile submission of the same body to the first Tudors—their suffering arbitrary power to regain its pitch after it had been extirpated in the seventeenth century—the frightful lesson of distrust in Parliaments, and in all institutions and all laws, taught by the ease with which Charles II. governed almost without control, at the very period fixed upon by our best writers as that of the Constitution's greatest theoretical perfection—and, above all, the very narrow escape which this country had of absolute Monarchy, by the happy accident of James II. choosing to assail the religion of the people before he had destroyed their liberty, and making the Church his enemy instead of using it as his willing and potent ally against all civil liberty—these are such passages in the history of our government as may well teach us to distrust all mere Statutory securities; to remember that Judges, Parliaments, and Ministers, as well as Kings, are frail men, the sport of sordid propensities, or vain fears, or factious passions; and that the people never can be safe without a constant determination to resist unto the death as often as their rights are invaded.

The main security which our institutions afford, and that which will always render a recourse to the right of resistance less needful, must ever consist in the pure constitution of the Parliament—the extended basis of our popular representation. This is the great improvement which it has received since the Revolution. As long as the House of Commons continued to be chosen by a small portion of the community, and to be thus influenced by the feelings and the interests of that limited class only, the Government resembled more an Aristocracy, or at least, an Aristocratic Monarchy, than a Government mixed of the three pure kinds; little security was afforded for constant and equal regard to the good of all classes; and little security was provided against such a combination between the Crown

and the Oligarchy as might entirely destroy even the name of a free Constitution. The increased influence of the Crown from large establishments, the result of the burthens left by expensive wars and of extended foreign conquests, seemed capable of undermining all the safeguards of popular liberty, and threatened to obliterate all the remains of free institutions as soon as some bold and politic Prince should arise equal to the task of turning such an unhappy state of things to his own account. In 1831 and 1832 the Parliamentary constitution was placed upon a wider and a more secure basis; and although much yet remains to be accomplished before we can justly affirm that all classes are duly represented in Parliament, assuredly we are no longer exposed to the same risks of seeing our liberties destroyed, and the same hazard of having to protect ourselves by resistance; nor can any one now deny that the democratic principle enters largely into the frame of our mixed monarchy. This great change is much more than sufficient to counterbalance all the increase of influence that has been acquired by the Crown since the Revolution, including the vexations which unavoidably attend the administration of our fiscal laws for the collection and protection of a vast revenue, and the creation of a numerous and important body, always averse to struggle under the worst oppressions, and always the sure ally of power—I mean the vast and wealthy body of public creditors, whose security is bound up with the existing order of things.

The great virtue of the Constitution of England is the purity in which it recognizes and establishes the fundamental principle of all mixed governments; that the supreme power of the state being vested in several bodies, the consent of each is required to the performance of any legislative act; and that no change can be made in the laws, nor any addition to them, nor any act done affecting the lives, liberties, or property of the people, without the full and deliberate assent of each of the ruling powers. The ruling powers are three—the Sovereign, the Lords, and the Commons: of whom the Lords represent themselves only, unless in so far as the Prelates may be supposed to represent the Clergy; and the Scotch Peers to represent, by election for the parliament, and the Irish, by election for life, the peerages of Scotland and Ireland respectively; the Commons represent their constituents, by whom they are for each parliament elected.



If it should seem an exception to the fundamental principle now laid down that the Crown has the power of making peace and war, and of entering into treaties with foreign states, operations by which the welfare of the subject may be most materially affected, it is equally true that no war can possibly be continued without the full support of both Houses of Parliament; and that no peace concluded, or treaty made, can be binding, so as to affect any interests of the people, without their subsequent approval in Parliament. The Sovereign, therefore, never can enter into any war, or pursue any negotiation, without a positive certainty that the Parliament will assent to it and support the necessary operations, whether of hostility or of commercial regulations; and thus the only effect of this prerogative is to give due vigour and authority to the action of the Government in its intercourse with foreign powers and its care of the national defence.

It is, however, a more serious infringement of the fundamental principle if either of the three branches assumes, under any pretence, a power of acting without the concurrence of the other two, and without the sanction of any known general law to which the obedience of the people may be required. The several branches of the system have each at different times endeavoured to exceed this limited and balanced power, and to exercise alone a part of the supreme functions of Government. The Crown long struggled with the Commons to be allowed the right of taxing; it assumed repeatedly the right to imprison individuals without bringing them to trial; it claimed the power of suspending laws or of dispensing with them at a much later period, and exercised this, at least in ecclesiastical matters, down to the period of the Revolution. The abandonment, or the prohibition by law of these dangerous pretensions, was the main victory of the people, both in the seventeenth and eighteenth centuries; the freedom of the Constitution was deemed to consist chiefly of the restraint under which the Sovereign was thus effectually laid. But the two Houses of Parliament, and more especially the Commons, have laid claim to certain privileges by no means consistent with the mixed nature of the Constitution, and repugnant to the liberty of the subject.

The judicial power exercised by the Lords as a supreme Court of Judicature in all matters of law, whether civil or criminal,

and a Court of general appeal in all equity suits, has never been deemed inconsistent with the liberties of the people. If indeed it were exercised, as by the letter of the Constitution it should be, by the whole body of the Peers, in like manner as their legislative and political functions are, great abuse must ensue, and wide-spreading oppression must be the consequence. But the Peers very wisely have in practice abandoned this right, and left their whole judicial business in the hands of some five or six of their number, professional lawyers, who have filled or continue to fill the highest judicial offices in the state. There have only been two instances of the Peers at large interfering in such questions for the last hundred years; only one within the memory of the present generation, and that nearly forty years ago.

Both Houses, however, claim to visit with severe punishment what are called contempts or breaches of their privileges, the Commons by imprisonment during the session, the Lords by imprisonment for a time certain, and by fine. Nor would this be objected to if it were confined to cases of actual contempt and obstruction, as by refusal to obey their lawful orders issued in furtherance of the judicial proceedings of the Peers, or of the inquisitorial functions of the Commons, or of any matter without the compassing of which either House could not proceed to discharge its duties. No court, from the highest to the lowest, can exist for any useful purpose if its proceedings may be interrupted by any unruly individual, or riotous mob, or if its members may with impunity be obstructed or threatened in the discharge of their duties; and it is absolutely necessary that such lawless conduct should be at once repressed by immediate punishment. But very different have been the powers of visiting contempts claimed by the two Houses, especially by the Commons' House of Parliament. They have punished summarily as breaches of their privileges acts which could in no way be construed into an obstruction of their functions, and which might most safely have been left to the ordinary visitation of the criminal law. We have in the course of the last two Chapters seen the latitude which they frequently assumed in classing whatever they disliked under the head of breach of privilege, and punishing it with extreme severity. In the time of James I. the Commons ordered a person who was charged only with having spoken disrespect-

fully of the Palatine, then an object of popular favour, to be led ignominiously in procession on horseback, with his head towards the tail of the beast, to be whipped from London to Westminster, to pay a fine of 5000*l.*, and to be imprisoned for life ; and all but the whipping was executed upon this unfortunate gentleman. In Charles I.'s time they habitually voted any act which displeased them a breach of their privileges. In order to reach an obnoxious individual, whatever he did was declared against their privileges ; thus to reach Archbishop Laud all "new-fangled ceremonies in the Church service" were voted contempts of the House. The same inordinate assumption of power under the name of privilege was in the next reign not unfrequent. The persons of members' servants too were held as sacred as those of members themselves. Nay, down to a late period, the last year of George II.'s reign, there are instances of members preferring their complaint in questions of private right to the House, instead of trying the matter by actions at law, and of the House treating the assertion of adverse rights as breaches of its privileges, and punishing the parties accordingly. Even in this day a libel on the House is treated as a breach of its privileges, as if any possible injury or obstruction to its proceedings could arise from prosecuting this as the King prosecutes it, and as every other person in the realm prosecutes attacks on his character.

It is impossible to deny that this power assumed by the Houses of Parliament, and especially abused by the Lower House, is an infringement on the whole principles of the Constitution, and a great violation of all the ordinary rules which ought to regulate the administration of criminal justice. In the *first* place the party wronged, or complaining of injury, not only institutes the trial without the intervention of a grand jury, but assumes to be the sole judge of the charge, to find the guilt, and to mete out the punishment. *Secondly*, the proceeding is of the kind most abhorrent to our laws ; for the party is called upon to confess or deny the charge, and if he refuse to criminate himself he is treated as guilty. But *thirdly*, and chiefly, he is tried, not by a general law, previously promulgated, and therefore well known to him whose duty it is to obey, but by an *ex post facto* law, a resolution passed by his accuser declaring the criminality of the act after it has been done. This appears to be quite intolerable.

Any law, anyhow made, provided it be made calmly, and before the event occurs which it embraces, is far preferable to a law contrived and promulgated for the first time on the spur of the occasion, when the passions are heated by the offence done or alleged. If even an indifferent party, a court of justice, or a legislature, were to make the law by which the defence should be defined, and the accused convicted, in one breath, the grievance would be intolerable of such an anomalous justice. But how incomparably worse is the justice of the party complaining, himself making the law by which his adversary is to be tried, and pronouncing the rule, and the conviction, and the punishment, at one and the same time? I say nothing of the manner in which this proceeding precludes the Royal prerogative of mercy, because possibly breach of privilege, whether actual or constructive, is a case which ought to be exempt from the protection of the Crown. But the other objections are quite sufficient to make all considerate persons, all who are not, like one great party in the state, carried away by an undistinguishing love of party supremacy, and disregard of all the rules that should regulate judicial proceedings, agree entirely with the very sound and judicious opinions on this important subject, expressed in the resolutions of the Lords on the Aylesbury case in the year 1701. They declared that "neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of Parliament; that the Commons by their late commitment of certain persons for prosecuting an action at law, under pretence that it was a breach of their privileges, have assumed to themselves a legislative power by pretending to attribute the force of law to their declaration, and have thereby, as far as in them lies, subjected the rights of Englishmen, and the freedom of their persons, to the arbitrary votes of the House of Commons."

In 1721 the Commons went yet further, for they committed to Newgate the printer of a Jacobite paper, merely because it was a public libel, and without pretending even to declare it a breach of their privileges; so that, by the same rule, they might punish any person for any kind of misdemeanour, without judge or jury.

I sincerely wish that I could perceive in the more recent

history of Parliament any disposition on the part of the Commons to recede from so untenable a pretension as the claim to declare at any time their privileges, and to add new chapters to their Criminal Code as new events arise. Not only did they commit Mr. Gale Jones to Newgate, on the flimsy and indeed ridiculous quibble that debating in a club a *question* concerning the parliamentary conduct of a member was in violation of the Bill of Rights, which forbids *questioning* in any court or place any member for his proceedings in Parliament (a provision plainly intended to prohibit all judicial proceedings or quasi-judicial proceedings against members for their parliamentary conduct); not only did they send Sir Francis Burdett, and a few years after Mr. Hobhouse, to prison for libels published against them, which the ordinary process of the law reached, and would have been quite sufficient to punish; but they afterwards assumed in 1836, and defended in 1837, the power of publishing whatever attacks on individuals they might think fit, and of protecting their agents from all responsibility, civil or criminal, for the act; a power never in modern times pretended to be exercised by the Crown, whose servants are responsible for all acts done by its orders. Upon the same memorable occasion they adopted a resolution reported by a committee charged to inquire into the matter, and in that resolution they asserted their unqualified right at all times to create new privileges, and denounce new acts as a breach of those privileges; so that as the law of Parliament now stands the two Houses are invested each with a separate and uncontrollable power of making laws as occasion may require, of grinding as it were a little new law as they want it, and to suit the particular cases which arise; nor is any limit but their own discretion assigned to this pretended right. It may be quite necessary to give them the right of removing and of summarily preventing all obstructions; quite right to let them visit, and severely visit, all misrepresentations in public of their proceedings, only made publicly known by sufferance; but to give them anything like the power of several legislation and jurisdiction claimed by both Houses, must be an infringement of the Mixed Constitution of the English Government. It is in vain to deny the origin of this claim, and the motive for preferring it. They dare not trust to the ordinary administration of the criminal law; they dare not go before an impartial judge and indifferent

jury ; they dread the consequences of leaving the law to take its course ; and therefore they must needs take it into their own hands, and at once make themselves party prosecuting, grand jury, petty jury, judge, and even law-giver, by one sentence forming the law, promulgating it, prosecuting for its violation, convicting the accused under it, he being their adversary, and sentencing him to suffer for the wrong done, or alleged to be done by him, to themselves.

Let us now shortly consider in what the Constitution of England consists, how its structure is preserved, and how its functions are performed, having generally surveyed the principles on which it rests, the sacred right of resistance, the separation and entire independence of its component parts, and the admission of the People as well as the Prince and the Peers to an equal share in its powers and prerogatives.

The whole Executive Power is lodged in the Sovereign ; all the appointments to offices in the army and navy ; all movements and disposition of those forces ; all negotiation and treaty ; the power of making war, and restoring peace ; the power to form or to break alliances ; all nomination to offices, whether held for life or during pleasure ; all superintendence over the administration of the civil and the criminal law ; all confirmation or remission of sentences ; all disbursements of the sums voted by Parliament ; all are in the absolute and exclusive possession of the Crown. An ample revenue is allotted for the support of the Sovereign's dignity, not only in a becoming but in a splendid manner, and his family share in due proportion the same liberal provision. To which is added a sum formerly unlimited, of late years restricted to 1200*l.* a-year, for the reward of merit, by way of gratuity or pension.

Such are the powers and prerogatives of the Crown ; but they are necessarily subject to important limitations in their exercise. Thus the Sovereign can choose whom he pleases for his ministers, dismiss them when he pleases, and appoint whom he pleases to succeed them. But then if the Houses of Parliament refuse their confidence to the persons thus named, or require the return to office of those so removed, the Sovereign cannot avoid yielding, else they have the undoubted power of stopping the whole course of Government. So, too, if war is declared, or peace concluded, contrary to the opinion of Parliament, the

Sovereign has no means of conducting either operation, and his own inclination must be abandoned. We have before seen at large (Pt. II. Ch. II.) how there is often a compromise effected between the conflicting branches of the Government; and how, to avoid a collision, each giving up a portion of its demands, the result of the combined movement which the machine of the state pursues, is one partaking of the impulse which each has given to it.

If it cannot on any account be affirmed that the Sovereign has full and independent powers of action, so it cannot any more be affirmed that he is not without power, and very considerable power, in the state. If he can find any eight or ten men in whom he reposes confidence, who are willing to serve him, and whom the Houses will not reject, he has the choice of those to whom the administration of affairs shall be confided. When he has obtained a ministry, on many important points they are likely to consult his opinion and wishes rather than bring matters to a collision with him. Many modifications of the measures of Parliament are likely to be adopted rather than come to a rupture with him. The vast patronage at the disposal of the Crown, and the great revenue allotted to meet the Sovereign's personal expenses and those of his family, are a source of individual influence which must arm him with great direct power. His opinions, if strongly entertained, like those of George III. on the American war and Catholic question, his wishes and feelings, if deeply entertained, are thus certain to exert a real influence upon the conduct of public affairs, and with even the most conflicting sentiments of the people and the Peers, secure a sensible weight to his views in the ultimate result. This is the spirit of the Constitution, which wills that the individual Monarch should not be a mere cipher but a substantive part of the political system, and wills it as a check on the other branches of the system.

Of all the Sovereign's attributes none is more important than his independent and hereditary title; nor can a greater inroad be made upon the fundamental principles of the Constitution than the bringing this into any doubt or any jeopardy. Hence, in the event of his infancy, illness, or other incapacity, it is a serious defect in the system that no general law has provided for supplying his place, because this leaves the question to be discussed and debated each time that the Royal authority fails, and

in the midst of all the passions sure to be engendered by the adherents of contending parties and the advocates of conflicting opinions. There can be no manner of doubt that Mr. Fox's opinions in 1788 were far more in accordance than those of Mr. Pitt with the spirit of a constitution which abhors all approach to election in the appointment of the Chief Magistrate. Yet that precedent, followed as it was by Mr. Perceval's ministry in 1811, in both instances, from the mere personal views of the parties and their hostility to the heir apparent, has established it as the rule of the Constitution, that in the event of the Sovereign's incapacity the two Houses of Parliament shall always legislate to choose the Regent and define his powers, as well as to provide for the custody of the King's person. This is a complete anomaly in our form of government, and it perpetuates the risk of the worst mischiefs arising as often as the incapacity occurs, by providing that the whole of the subject most exciting to all classes shall be discussed during the greatest heats which that excitement can kindle. Of the same Parliament which in its wisdom has declared itself the best judge in its own cause, and has resolved that the law of its privileges, the measure of its prerogative, shall be taken from occasional decisions made for the purpose of each case, it may be pronounced worthy and in exact consistency to refuse settling by a general law the manner of supplying any defects in the Royal authority, of preserving the prerogative of the Crown, and to leave the rule for special, and partial, and inflamed consideration as often as the incapacity occurs. As it has dealt with Parliamentary privilege so has it dealt with Royal prerogative, according to the factious views of the hour, and with no regard for the wellbeing of the Constitution.

The most important check upon the Royal authority is the necessity of yearly meeting Parliament, and of having recourse to it for the means of carrying on the government. The power of the sword is really only given for a year to the Sovereign; the only means which he possesses of keeping the army and the navy together, and enforcing the strict discipline required, flow from an act passed yearly and for a year each time. There are many branches of the revenue which in like manner are only granted for a year—in fact all save that portion which is mortgaged to the public creditor. If then a King were to retain



the troops on foot without a Mutiny Bill, and to levy the revenue not voted by Parliament, not only would the soldiery be released from obedience to their commanders, not only would the people be released from their allegiance, and justified in resisting the Crown, but the courts of law would refuse to aid the ministers by either suffering soldiers to be tried by courts martial or requiring the subjects to pay their taxes. No soldier needs fear punishment for his disobedience, no person needs pay any of the taxes beyond those mortgaged to pay the interest of the national debt. Thus it becomes absolutely impossible for the Crown to govern without assembling a Parliament, or to govern without a general good understanding with the Parliament so assembled. Besides, whoever should remain in any office of trust under the Crown while illegal attempts were making, much more, whoever should aid in making them, would as soon as Parliament met be impeached by one House and tried by the other; and although the Crown might pardon him, it could not prevent his trial and conviction.

Over the Parliament, thus essential to the administration of public affairs, the Sovereign no doubt has great influence. He can at any moment dissolve it, provided the Mutiny Bill is passed and the necessary supplies are granted; and thus, by appealing to the nation at large, he can defeat any factious cabal which an oligarchy not faithfully representing the body of the people might contrive for enslaving the Prince. There is even some risk of this power being abused, by the Royal influence being first employed to excite a popular clamour against particular men or particular measures, and then advantage being taken of such delusions in an immediate general election. The shortening of the duration of Parliaments affords the best security against this hazard, because if the Parliament has only been assembled during a short period of time the Sovereign is less likely to encounter another general election.

The Lords who form the upper and permanent branch of the legislature, may be considered as representing not merely themselves, but also their powerful families and immediate connexions, and in some sort as representing all the greater land-owners in the country. We have shown (Part II. Chap. VI.) how great a tendency the habits and the interests and even the prejudices of this important assembly have to make it a conser-

vative body, ever ready to fling its weight into the scale of the existing Constitution, and to prevent matters coming to extremities between the Crown and the people. Its veto upon all the measures that pass the Commons, the weight derived from its judicial functions, its general superiority in the capacity and learning required for excelling in debate, its more calm deliberation on all questions, unbiassed by mob clamour, its more statesmanlike views of both foreign and domestic policy, give the Upper House an extraordinary influence on all questions of national concernment. But to these sources of weight, the elements of the Natural Aristocracy, must be added the influence and indeed the direct power bestowed by vast possessions, as well as illustrious rank; and against this can only be set the popular connexion of the other House and its tenacious adherence to certain privileges with respect to the Lords. I allude particularly to the exclusion of the latter from the originating of any measure of supply, and from all alterations upon any financial measure sent up from the Lower House. Although the Lords have never abandoned their claim to originate and to alter money bills as well as the Commons, yet in practice they never assert the right, and we may therefore take it, that by our Constitution the Commons alone can begin any measure of supply, and that the Lords have no power to alter it as sent up to them, but must either accept it wholly or wholly reject it.

It seems quite clear that this exclusive right of the Commons is wholly useless to them, while it greatly tends to impede public business, by loading the Commons with Bills which might be considered in the Lords while they have nothing else to do, and occasioning Bills to be thrown out in their last stages, and then introduced in the Commons and reconstructed, in order to meet objections taken in the Lords. That the Commons gain nothing whatever by this pretension is clear; and nothing can be more absurd than citing the case of the Upper House's judicial functions as a parallel one; for in that instance the Commons cannot interfere at all, the whole matter beginning and ending in the Lords; whereas the assent of the Lords to a money-clause is just as necessary as to any other part of a Bill. The claim is grounded on mere violent and factious excitement; on mere romantic and poetical declamation; on views consisting of exaggeration; of confounding things like as if they were identical,

or substituting one idea for another, or a determination to act unreasonably and according to fancies and figures of speech, not solid arguments. It must be remarked, too, that the Commons, after treating this exclusive privilege as of paramount importance, as the safeguard of all its other privileges, have suffered it to be broken in upon once and again; as when it withdrew from the absurd pretence that a prohibition being enforced by a pecuniary penalty could not be touched by the Lords, because it was a money-clause.

Another point, on which the Commons claim the exclusive right to begin measures, relates to the election of its members. They hold that the House cannot part with this to any other body; and further, they will not suffer any Bill touching it to begin in the Lords. Yet nothing is more certain than that, as far back as 1770, they abandoned this exclusive right altogether, transferring the whole judicature touching elections from themselves to a committee, authorized by an Act of Parliament, to which of course the assent of both King and Lords was absolutely necessary. It is equally certain that this and the subsequent statutory amendments of the Election Law have proved among the most useful, as they were among the most necessary improvements in the practice of the Constitution. Nor does any one now doubt that a further delegation of the judicial power in dealing with contested elections, such a delegation as should transfer it wholly from the Committees of the House to independent and impartial Judges, would be a still more valuable improvement in the constitution of Parliament.

No reasonable doubt can exist that the most perfect arrangement of the mutual rights of the two Houses would be that of entire equality; and that neither ought to have the exclusive right to originate or frame any law. In discussing certain measures there would naturally be a greater weight attached to one House than the other, a greater deference shown to its opinions, and a proportionable reluctance to reject its propositions. Thus the Commons, as representing the numbers of the community, as well as a portion of its wealth, would naturally be listened and deferred to, upon all questions of public burthens, whether on the property or the labour of the people, and on all questions touching the elections of their members. The Lords would, in like manner, be more listened and deferred to on matters affect-

ing the judicial system and the privileges of Peerage. Nor can it be reasonably doubted that this mutual deference would be far more surely and far more readily accorded by both Houses, if neither persisted in setting up claims so fanciful and so preposterous as those which we have been considering—claims inconsistent in themselves, and wholly repugnant to the fundamental principles of a mixed Government.

The Crown is the fountain of honour, and can alone confer any rank or precedence. The unlimited power belongs to it of creating Peers; and of these no less than twenty-six, the Prelates, enjoy their Peerage only for life. The power, indeed, exists of creating temporal Peers also for life; but it has never been exercised further than by calling up the eldest sons of Peers, an operation which adds to the numbers of the House only during the lives of individuals. Twenty-eight Irish Peers sit by election for life, and sixteen Scotch during the parliament. The only restriction upon the power of creation refers to the Irish Peerage. No addition can be made to it in a greater proportion than that of one to every three peerages that become extinct.

This prerogative has upon several occasions been exercised to influence the proceedings in Parliament. Lord Oxford carried a question of importance in the Lords by a sudden creation of twelve peers, in the reign of Queen Anne. Mr. Pitt greatly extended the influence of the Crown in the House of Commons, and diminished the importance of that body, by transferring many of his adherents among the landed gentlemen to the Upper House. In recent times the Government, of which I formed a part, backed by a large majority of the Commons and of the People out of doors, carried the Reform Bill through the Lords by the power which his late Majesty had conferred upon us of an unlimited creation of Peers at any stage of the measure. It was fortunate for the Constitution that the patriotism of the Peers prevented us from having recourse to a measure so full of peril. I have always regarded it as the greatest escape which I ever made in the whole course of my public life. But were I called upon to name any measure on which the whole of a powerful party were most unanimously bent, nay, which attracted the warmest support of nearly the whole people, I should point at once to the measure of a large

creation of Peers in 1831 and 1832. Nothing could possibly be more thoughtless than the view which they took of this important question. They never reflected for a moment upon the chance of their soon after differing with Lord Grey and myself, a thing which, however, speedily happened—never considered what must be the inevitable consequence of a difference between ourselves and the Commons—never took the trouble to ask what must happen if the Peers, thus become our partisans, should be found at variance with both King, Commons, and People—never stopped to foresee that, in order to defeat our oligarchy, a new and still larger creation must be required—and never opened their eyes to the inevitable ruin of the Constitution by the necessity thus imposed of adding eighty or a hundred to the Lords each time that the Ministry was changed. I have seldom met with one person, of all the loud clamourers for a large creation of Peers, who did not admit that he was wrong when these things were calmly and plainly stated to him—these consequences set before his eyes. But I have often since asked myself the question, Whether or not, if no secession had taken place, and the Peers had persisted in really opposing the most important provisions of the Bill, we should have had recourse to the perilous creation? Well nigh twelve years have now rolled over my head since the crisis of 1832: I speak very calmly on this as on every political question whatever; and I cannot, with any confidence, answer it in the affirmative. When I went to Windsor with Lord Grey I had a list of eighty creations, framed upon the principles of making the least possible permanent addition to our House, and to the Aristocracy, by calling up Peers' eldest sons; by choosing men without any families; by taking Scotch and Irish Peers. I had a strong feeling of the necessity of the case in the very peculiar circumstances we were placed in. But such was my deep sense of the dreadful consequences of the act, that I much question whether I should not have preferred running the risk of confusion that attended the loss of the Bill as it then stood; and I have a strong impression on my mind that my illustrious friend would have more than met me half-way in the determination to face that risk (and, of course, to face the clamours of the people, which would have cost us little) rather than expose the Constitution to so eminent a hazard of subversion. Had we taken

this course I feel quite assured of the patriotism that would have helped us from the most distinguished of our political antagonists; and I have a firm belief that a large measure of reform would have been obtained by compromise—a measure which, however hateful at the moment to thoughtless, reckless men, become really more eager about the mode of obtaining it than about the object itself, would afterwards have proved satisfactory to all. My opinion of Lord Grey's extreme repugnance to the course upon which we felt we were forced, has been confirmed since he read the above passage.

We have now considered the House of Lords in its constitutions and functions, composed of Spiritual and of Temporal Peers. The Prelates sit, and have always had seats in that House as Barons, each holding his see by the tenure of a freebarony. But the Clergy, as a separate body in the State, had an assembly of their own, called the *Convocation*, summoned by the Archbishop's writ under the directions of the Crown. There was one for the province of York, which never was of any importance, and one for that of Canterbury. The Convocation consisted of the Bishops, who formed the Upper House; and the Deans and Archdeacons, proxies for the Chapters, and two for each diocese, elected by the Parochial Clergy; these formed the Lower House. The Convocation was hardly ever consulted except on granting a supply, and enacting Ecclesiastical Canons. In the reign of Henry VIII. and Elizabeth, it was consulted on questions touching the religion of the State. Thus, in 1533, it approved the King's supremacy then enacted by law; and in 1562 it confirmed the Articles of Religion. However, by the Statutes made in Henry VIII. and Elizabeth's reign, and above all by the Act of Uniformity in Charles II.'s time, the power of making canons without the King's leave was first taken from the Convocation; the Thirty-nine Articles, and the articles respecting residence, became fixed and incapable of alteration except by the Legislature; and the doctrine gradually became established in the Courts of Law, that no canons whatever, unless confirmed by Parliament, could bind the Laity. Even the subsidies which the Convocation granted were confirmed by Parliament, and thus were assumed to be ineffectual of themselves. At length, in 1664, the taxation of the Clergy ceased in Convocation altogether, since which time all classes of the people have been taxed in common by the Parliament. At the time of the Revo-

lution, 1688, the Jacobites, for factious purposes, with the restless Atterbury at their head, before his flight and attainder, endeavoured to claim for the Convocation a right to meddle with Church questions, and some countenance was even given to those agitators by the Commons referring the form of the Liturgy for their consideration. The answer to all their arguments was the King's absolute power of adjourning and proroguing them, which he was free to exercise at all times because he no longer had occasion for their votes to obtain supplies. In the early part of Queen Anne's reign the body was suffered to sit more than it had done for many years; it became notorious for violence of faction; it was soon, however, defeated by a prorogation; and since 1717 it has never sat for the transaction of any business whatever. Summoned as a matter of form at the beginning of each new Parliament, it is immediately prorogued as soon as it carries up an address to the Throne. The existence, therefore, of the Convocation is now nominal merely.\*

The Crown has the absolute power of appointing all the Judges, with the three exceptions of the Judges in the Ecclesiastical Courts, who are named by the Archbishops and Bishops; of the Vice-Chancellors of the Universities, who exercise a local jurisdiction over the students and tradesmen in the University towns; and of the Borough Magistrates, who exercise local jurisdiction by their Charters of Incorporation.† It is greatly to be desired that such anomalies, especially the appointment of the Dean of the Arches and Judge of the Consistorial Court of London by the Archbishop of Canterbury and Bishop of London, respectively, should cease; and I must, in justice to these Right Reverend Prelates, observe that they were willing, in 1833, to give up this patronage if Parliament could have been induced to make a proper provision for those high legal offices. It must likewise be added that the patronage has never been

\* It is singular that Mr. Hallam, in his able and learned work, should have fallen into the vulgar and hurtful error of considering the Church as a corporation. "It is the first corporation in the realm," says he, Chap. xvi; again, "the clergy have an influence which no other corporation enjoys," *ib.* The Church is not even synonymous with the clergy—it is all the faithful in communion with the Church according to the definition in the Thirty-nine Articles themselves; it is also a collection of corporations clerical, for each chapter is a corporation aggregate, and each parson is a corporation sole. The consequences of Mr. Hallam's notion are most hurtful in considering questions of Church Reform.

† The lord of the manor of Havering-atte-Bower in Essex has the right of appointing Justices of the peace within that manor.

abused, the most eminent practitioners in the Courts Christian being invariably chosen, as they ought, to fill such important places.

Though named by the Crown, care is taken to make the common law Judges independent. Soon after the Revolution their places were made to continue during life or good behaviour; they are irremovable except by a joint address of the two Houses of Parliament; and as this only enables the Crown without compelling, each act of removal is like a statute, requiring the concurrence of the whole three branches of the Legislature. The power has never been exercised;\* and at the accession of George III. the judicial independence was rendered complete by providing that the office should not be vacated on a demise of the Crown. The highest of all the Judges, though only clothed with a civil jurisdiction, the Lord Chancellor, holds his place during pleasure. But the analogy of the Common Law Bench has been followed in the case of all the other Equity Judges—both the Master of the Rolls, the Vice-Chancellors, and the Masters in Chancery, holding their offices during life and good behaviour. The Judicial Committee of the Privy Council is also placed in a somewhat anomalous position, although quite consistent with the fundamental principle which views the Sovereign as the authority appealed to in all Admiralty, all Consistorial, and all Colonial cases. The members of that High Court, therefore, though irremovable from their judicial stations out of the Council, may be removed from the Privy Council, and thus cease to form part of the Judicial Committee. It is, however, to be observed, that no emolument nor any rank is attached to the place; and, further, that no Privy Councillor is ever removed without grave reason for his removal. Nevertheless, it would be more satisfactory if some means could be devised of making these important judicial functionaries wholly independent of the Crown in name, as they undoubtedly are in fact.

An additional security is taken for the pure appointment of Judges by the very proper practice now become established, of the Chancellor, who is in fact the Minister of Justice, appointing

\* Nearly forty years ago the House of Lords inquired into the conduct of Mr. Justice Fox, an Irish judge, accused of partial and unbecoming conduct in his judicial office. The inquiry was of considerable duration, and what might have been the result we are left to conjecture; the learned judge having resigned his office. Another Irish judge, Mr. Justice Johnstone, who had been convicted of a private libel, would also have been proceeded against, had he not resigned.



the Puisne Judges without any communication with his colleagues; he first of all takes the King's pleasure upon the nomination. This excludes, generally speaking, all political interference; and it is greatly to be desired that the same high officer, and not the Secretary of State, should fill up the successive vacancies in the Scottish Bench. The important office of Justice of the Peace is conferred by the Chancellor, generally on the recommendation of the Lord Lieutenant, or rather the *Custos Rotulorum* in each county. But once put in the Commission of the Peace, it is the practice not to remove any Justice without a conviction in a Court of Criminal Judicature.

The purity of the Bench is still further guarded by the statutory provisions disabling the Judges from sitting in the House of Commons. The Master of the Rolls and the Consistorial Judges are still exceptions to this rule. The Vice-Chancellors and the new Judges in Bankruptcy, the Judge of the Court of Admiralty and the Masters in Chancery, have all in later years been forbidden to sit in the Lower House. The chiefs are sometimes members of the House of Lords; and this is in a certain degree necessary for the perfect exercise of its judicial functions. But the feeling is so strong and so general against Judges mingling in the strife of political party, that we rarely have any example of these great legal dignitaries taking part in the struggles of faction.

If the other parts of the political fabric which we have been surveying are well entitled to great admiration, surely there is no portion of it more worthy of an affectionate veneration than the Judicial system. It is by very far the most pure of any that ever existed among men; its purity in modern times is not only beyond impeachment, but beyond all question. In the utmost violence of faction, in the wildest storms of popular discontent, when the Crown, the Church, the Peers, the Commons, were assailed with the most unmeasured violence, for the last century and upwards no whisper has been heard against the spotless purity of the ermine; or, if heard for an instant, it has been forthwith drowned in the indignant voice of reprobation from all parties, and has only served to destroy the credit of the reckless slanderer who emitted it.\*

\* The shallow, violent, and unprincipled Junius never certainly recovered his ignorant assault on Lord Mansfield; that and his equally vile calumnies against the Duke of Bedford deserved equal reprobation.

The possession of such a system is invaluable to any nation ; but in a free constitution which requires large power to be lodged in the irresponsible hands of the people, it is absolutely essential to the existence of order in union with liberty. The Judicial power, pure and unsullied, calmly exercised amidst the uproar of contending parties by men removed above all contamination of faction, all participation in either its fury or its delusions, held alike independent of the Crown, the Parliament, and the multitude, and only to be shaken by the misconduct of those who wield it—forms a mighty zone which girds our social pyramid round about, connecting the loftier and narrower with the humbler and broader regions of the structure, binding the whole together, and repressing alike the encroachments and the petulance of any of its parts. When Montesquieu invented his epigram, so often cited since, that the fate of the British Constitution would be sealed whenever the Legislature became more corrupt than the Constituents, he overlooked a topic more fruitful of sound and valuable truth, if not easily lending itself to glittering figure ; he might better have pronounced the Constitution eternal while the Judicial portion of it remained entire.

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We have now contemplated the structure of the British Constitution ; and we may cast our eyes for a moment upon the rights which it secures to the people, and the advantages it gives to the administration of their affairs. This we shall best do by considering those privileges which in less free countries are withheld from the people, and those facilities which in more popular Constitutions are found wanting to the Government.

By the choice of their representatives—by the power vested in the great landowners and other high dignitaries of the country—by the constant transaction of all public business in Parliament—by the unbroken publicity given to all Parliamentary discussions—the people, both of the higher and the middle ranks, have a real voice in the management of their own affairs ; a real control over the conduct of their rulers ; and, indeed, a great weight in the selection of the public servants. It is much to be lamented that the working classes have not, generally speaking, their share in the administration of affairs ; and this might most safely, and indeed beneficially, be entrusted to them. But as

far as regards their rights and liberties they have the most full protection of the Constitution. The meanest person in the country cannot be oppressed without his wrongs becoming known in Parliament and to the whole community, even if the unhappy expense and complication still involving all legal proceedings should prevent him from having the full benefit of the Judicial system. This is one of the prime distinctions of England; that the Houses of Parliament, beside transacting the regular public business of the Nation, are ever open to hear the petitions of the people, and the grievances of individuals; nor can the most insignificant member of either stand up in his place to prefer a complaint of such wrongs from the meanest subject of the Crown, without having a patient and even favourable audience. It is inconceivable what a confidence this inspires in all good men, and what a terror it strikes into those who would vex or oppress them.

It is needless to enumerate the important checks on Royal authority and Ministerial abuse which this Constitution provides. The people cannot be taxed to the amount of a farthing without the consent of the whole Parliament; there cannot be raised one man to serve in the Army, and but for the barbarous practice still adhered to of impressment, there could not be raised a man to equip the Navy, without the sanction of the same three powers; nay, as no war can be carried on without that concurrence, impressment, how harsh and clumsy a method soever of recruiting, may be strictly said to depend on the will of Parliament. Above all, for every act done by the Crown there must be a responsible adviser and responsible agents; so that all Ministers, from the highest officers of state down to the most humble instrument of government, are liable to be both sued at law by any one whom they oppress, and impeached by Parliament for their evil deeds.

The right of Public Meetings to consider state affairs is possessed in an almost unlimited extent by this people. It is only restricted by law when it exceeds all fair, useful, and legal bounds, and is made the means of intimidating the constituted authorities, terrifying the peaceable and well disposed, and preparing the forces and the approach of rebellion.

The right of Printing and Publishing is subject to no further restriction than that of attending public meetings. No previous

licence is required either for putting forth a book or carrying on a journal ; men are only called upon to afford the means of discovering their persons, in case they should pervert the press to the purposes of private and personal malice, or should make it an engine for exciting to insurrection and other crimes. It is to be lamented that the law in this respect is still defective, by withholding the right to prove the truth in prosecutions for public libel ; and by not making a distinction between the author and the publisher, so as to favour the declaration of all writers' names and discourage anonymous publication. The leave to prove the truth in all cases, whether of public or private prosecution, should be confined to the real author alone.

The security of personal liberty is not only made complete by the Courts being open to any parties who have been unlawfully arrested, but by the severe penalty inflicted on all the Judges who refuse a writ of Habeas Corpus. It is the only instance known in the law of any country, of an action being allowed to be brought against any Judge for his judicial conduct. For oppression and corruption of other kinds, our Judges may be removed by the joint address of the two Houses, or they may be impeached by the one House and tried by the other. But for withholding, even for an hour, this remedial writ, the great security of personal liberty, they may be sued as common wrong-doers.

Let us now for a moment consider how far these privileges are made consistent with a sufficient vigour and unity in the executive administration of affairs. It must be admitted that the more popular constitution of the United States is exceedingly inferior in this important particular to that of England.

The Government cannot be carried on with us for any length of time, unless the Ministers of the day have the support of a decided Majority in both Houses of Parliament. An attempt, attended with most mischievous consequences, was lately made to govern without such a majority. It led to so great public inconvenience, and was attended with so much discomfort and discredit to those who made it, that we may safely conclude the first experiment of this kind will also be the last. Hence the Government can always reckon on a general support of its measures ; and can both carry on hostilities, if unhappily this recourse should be unavoidable, form alliances, and enter into

negotiations with sufficient confidence. Extravagant grants of money will not be obtained; unjust or impolitic measures will not be supported; but the Government which flies not in the face of public opinion, may be well assured of receiving the sanction of Parliament to all its important measures.

The large revenue placed at the Sovereign's disposal, makes him in a great measure independent in all ordinary transactions. He is not thereby enabled to govern without Parliament; but he is not reduced to the condition of a cipher, a pageant, or a dependant. He has influence enough to make his opinions and his inclinations felt in all the operations of the state.

The participation of the people of the upper and middle classes in all the affairs of state, the complete publicity given to all the measures of Government and of Parliament, and the full discussion out of doors which they undergo, knit the governors and the governed closely together, and enable the former to call forth all the resources of the country. See the vast armies at sea and on shore which our scanty population has at different times maintained! Mark the endless variety of our settlements in all the most remote quarters of the globe! Above all, reckon the hundreds of millions which have been levied within the last hundred and fifty years from the people, and levied with hardly a remonstrance!—and then confess that for producing a strong government there is nothing like a popular constitution—that no despot, be he ever so absolute, has any engine of taxation that can match a Parliament! If it be said that the American Government can as well call forth the resources of the people, I have very great doubt if the national representatives, and especially the President towards the end of his first three years, would inflict a heavy excise or a grinding income-tax upon the people, as our Parliament has so often done; and I have no doubt at all that such an infliction would very speedily lead to a termination of hostilities, without any very great nicety about the terms of the peace. The English people are so ruled that if once war is entered into there is quite sufficient resistance from the Government and the Peers to an importunate desire of peace which might put the interests of the state in jeopardy, or fix a stain upon the national fame.

The three principal defects in the structure of the House of Commons, and which might be removed, though it is hardly

possible to remove altogether the greater evil of bribery, are the too great numbers of the House, the lopping off all close or nomination boroughs, and the substituting in their place some two or three score of small towns, the inevitable scenes of corruption.

1. The number of 658 is preposterously large. Though seldom above five-sixths attend, yet the meetings are far too numerous for calm discussion, and even for orderly demeanour. The number of speakers, too, protracts indefinitely the debates, and obstructs all business, so that, the whole session being spent on a few subjects, chiefly of a party kind, towards the end of it, when men are exhausted, and when no considerable numbers remain in attendance, the most important measures pass without any consideration, and oftentimes some of this description are thrown out by the obstinate opposition of a few men, who profit by the period of the expected prorogation, in order to threaten delay, and thus cause useful bills to be given up. The Local Courts Bill, the Irish *nullum tempus* Bill, and others, were put off for a year by this unworthy species of warfare in the session 1842; and some measures which did pass, as the Imprisonment for Debt Bill, and the Bankruptcy Court Bill, were greatly mutilated. Party has seldom been productive of a worse evil than its throwing out one of the most valuable improvements in the Reform Bill of 1831, that original measure having reduced the numbers of the Commons from 658 to 500.

2. The want of close boroughs, or some substitute for them, is an undeniable evil, and greatly obstructs the course of public business. However opposed these boroughs may be to constitutional principle, there being no means of placing great Government functionaries in the House of Commons is a serious evil. I more than once adverted to this in 1831 and 1832, when the Reform Bill was before the Lords. I agreed with the Duke of Wellington, who foresaw serious difficulty in carrying on the national affairs in such a Parliament as was proposed, unless indeed we adopted the French plan of allowing the Ministers to speak in the two Houses, or at least in one of them, without seats and voices. Soon after I had a practical illustration of my argument, which confirmed these apprehensions. The Attorney-General was thrown out of a popular place by a cry which the Dissenters raised on some temporary matter, and

he remained excluded the whole session, when the accident of a Scotch Judge making a vacancy on that Bench removed the Lord Advocate, and the Attorney-General succeeded to his seat. Many important measures for the amendment of the Law were thus postponed for a whole year. But it may at any time happen that a Chancellor of the Exchequer, for conscientiously performing his duty by propounding an unpopular tax, or a Crown lawyer by repressing smuggling, or prosecuting sedition, shall find no popular constituency ready to choose them for their members, and thus the whole Government may be paralyzed.

3. The small boroughs of 200 to 400 voters are multiplied by the late Reform, and this is anything rather than an improvement on the elective system. Those places are unavoidably the haunts of bribery, hotbeds of every species of corruption. They fall into the hands of some jobbing attorneys, who traffic in them under the specious pretext of being paid their long bills.

If we endeavour to prevent bribery altogether, we may fail. But if we would much lessen its amount, what can be more obvious than the remedy of dividing the country into electoral districts, as France is? It is certain that bribery is confined to the towns, and to those, generally speaking, of a moderate size; that in hardly any of the very large ones does it prevail at all; that in none of the counties is it known. The right course, it should seem, is to choose the members not by towns and by counties, but by districts composed of town and country together. Nor can there be any valid objection to thus blending the town with the country. Nay, were there even an objection, it must be a very formidable one to counterbalance the mighty benefit of putting down the pest of corruption which now threatens our national morals, as well as the purity of our Parliamentary system and the existence of our free Constitution; nay, which makes many good men, in balancing the advantages of a free and an absolute government, hesitate which to prefer while they find that a popular Constitution can only be purchased by the ruin of all morals.

We have now been contemplating the English Constitution in its structure and in its operation during ordinary times. But its admirers commend, and in some sort justly commend, its powers of adaptation to existing circumstances. Thus the most im-

portant rights have occasionally been suspended, or have been subjected to great restraints, almost amounting to total suspension. The right of public meeting was at an end during the greater part of the war which ended at the peace of Amiens. It was afterwards suspended for a few months in 1820. On these occasions no one denied that circumstances might require and so justify this restriction upon the right of meeting; the only question raised was upon the amount of the danger which was said to threaten the Government; an amount which I and others contended did not then justify resorting to so extreme a course.

The same remark applies to the suspension of the Habeas Corpus Act, as it is incorrectly termed; but that act\* only enforced and improved the subject's common law remedy, by giving it in vacation time, by extending the power of issuing the writ to all judges, by subjecting to heavy penalties those who withheld it, by prohibiting imprisonment beyond the seas, and by providing that all gaols should be delivered of prisoners at each assizes or sessions. The measure adopted frequently in William III.'s reign, again in George I.'s and afterwards in George III.'s, was a power conferred on the Government of detaining and imprisoning persons suspected of treasonable and seditious designs without bringing them to trial. This is a far worse measure at all times than the restriction of public meetings; but the exercise of the power is at least under some check; for a Bill of Indemnity is always required to secure the Government which has used such power of imprisonment, and as this bill must be carried through after the alarm has passed away, possibly when a new ministry is in office, they who have occasion for it are exposed to considerable risk if they have at all abused the power temporarily bestowed. I have conversed with ministers who had been parties to such proceedings, and I have invariably found in them a very natural, may I add also, a very wholesome, aversion to the whole plan.

The restraints upon Aliens during the last war may be ranged under the same head of extraordinary remedies. Nothing could be more unconstitutional, nothing more liable to abuse; and, accordingly, we have more than once had occasion in the course of this work to note the cases of grievous oppression to which the powers of the Alien Act were occasionally perverted.

\* 31 Car. II., c. 2.



In these discourses upon the frame of our Government, and especially in the latter portion of them, I have frequently used the term *constitutional*; notwithstanding the disfavour in which it is held by political reasoners of the Bentham school. They regard it as a gross absurdity, and as the cant language of the "factions," whom they hate. They say that the word has either no meaning at all, or it means every thing and any thing. A thing is unconstitutional, say they, which any one for any reason chooses to dislike. With all deference to these reasoners, the word has a perfectly intelligible meaning, and signifies that which it is always most important to regard with due attention. Many things that are not prohibited by the law, nay that cannot be prohibited without also prohibiting things which ought to be permitted, are nevertheless reprehensible, and reprehensible because contrary to the spirit of the Constitution. Thus the Sovereign of England is allowed by law, like any other person, to amass as much money as he pleases by his savings, or by entering into speculations at home and abroad. He might accumulate a treasure of fifty millions as easily as his brother of Holland lately did one of five; and he would thus, beside his Parliamentary income, and without coming to Parliament for a revenue, have an income of his own equal to two or three millions a year. This would be an operation perfectly lawful and perfectly unconstitutional, and the minister who should sanction it would be justly liable to severe censure accordingly.

So we speak with perfect correctness of a law which is proposed being unconstitutional, if it sins against the genius and spirit of our free Government, as for example against the separation of the executive from the legislative and judicial functions. A bill passed into a statute which should permanently prohibit public meetings without consent of the Government, would be as valid and binding a law as the Great Charter, or the Act of Settlement; but a more unconstitutional law could not well be devised. So a law giving the soldiers or the militia the power of choosing their officers, or a law withdrawing the military wholly from the jurisdiction of the Courts of Law, would be as binding and valid as the yearly Mutiny Act. But it would violate most grievously the whole spirit of our Constitution. In like manner letting the people choose their Judges, whether of the Courts of Westminster, or Justices of the Peace, would be as unconstitu-

tional a law as letting the Crown name the juries in all civil and criminal cases.

For these reasons I can on no account agree with the objections, holding as I do that the phrase is perfectly logical and correct in the strictest sense possible.

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NOTE.—It is unnecessary to observe that the authorities mainly to be consulted by such as would well study the Constitution of England and its History, are the Statute Book and the Parliamentary Writs; the decisions of our Courts of Justice; and the text writers upon our Jurisprudence. Next to those are the Debates in Parliament, since they have been printed. But there are excellent helps to this study in the works of learned authors professedly treating of the subject. Those of Blackstone, with the political writings of Locke, and the controversial ones of Brady and his adversaries, may be named among the older ones. Of late years Mr. Hallam and Lord John Russell have both made very valuable contributions to the learning of this most important subject. It may even seem to some presumptuous, and to others superfluous, for me to have treated at so great length a matter on which they had written at large; but their treatises, however valuable, have one great defect in common—they begin with the Tudors. Now it is quite undeniable that the foundations of our Constitution were laid many centuries before the fifteenth. Nor can any one hope thoroughly to comprehend it who has not gone back to the earliest times. I have never been able to understand why those able and learned authors have both begun with Henry VII. If, in discussing the Constitution of France under the old Monarchy, we are obliged to trace it from the earlier times, and instead of going back to Louis XIII. we go even to the kings of the first race as a matter of course, examine the successive steps by which the States-General and Provincial were first convened, and afterwards disused, and by which the Parliaments rose to an importance they never lost, surely it is still more necessary to trace the History of the English Constitution from the foundation of that structure which has never been destroyed or impaired, but always been fortified and improved; to examine, for instance, the origin and growth of our Parliament, which continues the Legislature of the Realm at this day, as we have examined the origin and growth of the French States, which had long before the Revolution ceased to exist at all.

I was very desirous that my learned and esteemed friend, Lord John Russell, should have undertaken this portion of the present work, he having expressed a far too favourable opinion of the preceding por-

tions of it; an opinion which I am too conscious it owes much rather to private friendship than its own merits. Nor was it until I found it impossible to prevail upon him, in consequence of his other important avocations, that I finally undertook it myself.

Among the writers who have thrown any light upon this subject is not certainly to be mentioned M. La Croix. His superficial and inaccurate work is still worse upon the English than upon the other constitutions. A sample of the learning which he brings to bear upon it may be given; and it will suffice to show that, at any rate, some novelty is to be found in his pages. "No son," says he, "can succeed to his father's estate without the written permission of the Archbishop of Canterbury, who derives immense revenues from this relic of the feudal law."—ii. 293. "The Lord Chancellor has the superintendence of all hospitals, and is protector of all paupers. To him application is also made to have an interpretation of the true spirit of the law."—ib. 295. "In the villages the lords of the place, formerly called barons, have police courts for regulating sales and transfers."—ib. 287. "The justices of peace are in some sort the delegates (*sub-délégués*) of the sheriff."—ib. 296.

## CHAPTER XXX

## GOVERNMENT OF THE UNITED STATES.

First Settlement of the Colonies—Virginia—New England—Different Charters—Colonial Constitutions—Provincial; Proprietary; Chartered—General Resemblance to English Government—Causes of the Separation—Progress of Independence—Great importance of the Event—General Frame of the Republican Government—Fundamental Principle—Legislative Power—Congress—Representatives; their Election; Qualification—Senate—Powers of Congress—Powers of the Two Houses—President; his Election; his Powers—Judicial System—General Law—Alterations of the Constitution—Supremacy of Judicial Power—Annuling Laws as unconstitutional—Nature and Grounds of this Doctrine—Its connexion with the Federal Principle—Amphictyonic Council in Greece—Further Illustrations—Examples of its application; to Laws of particular States; to Laws of Congress—Works on the Constitution of the United States.

WE are now naturally led from the English to the American Constitution, because although republican, it is taken in most of its fundamental principles from that of the mother country of which its founders had been a colony. The examination of this system will not detain us so long as that from which it sprang, because the whole of its origin and history belongs to times so recent as to be well known, and even in the recollection of persons still alive.

The successes of the Spaniards in South America, notwithstanding the dreadful cruelties with which they were attended, turned the attention of other nations to the new world; and as early as the end of the fifteenth century Henry VII., having fitted out a small expedition under John Cabot, a Venetian mariner, obtained by his discoveries a footing on the northern continent from Newfoundland to the Gulf of Mexico. But for above a hundred years no actual settlement on those shores was attempted; and it was not till 1606 that the first effectual steps were taken to plant a colony. In that year the coast of North America, from the 34th to the 45th degree of latitude, was divided into two districts nearly equal. The southern district was granted to Sir Thomas Gates and his associates, who were known as "the London Company," and who commenced the

settlement of Virginia the following year. The northern district was granted to the "Plymouth Company," who, in 1620, commenced a settlement at Plymouth, which may be considered as the cradle of all the settlements afterwards known as New England.

The Colony of Virginia was at first governed by a Council ; but in 1619, the Governor (Yeadley) gave them in Virginia a representative assembly,—which in 1624 was taken away with the Charter by a *quo warranto* proceeding in the mother country. The administration remained vested in a Governor and a Council of twelve, both named by the Crown, until Charles I. gave Sir William Berkeley, a person of great integrity and capacity, power to assemble a representative body and instructions to have justice administered upon the principles of the English law. No valid charter was, however, granted prior to the Restoration ; but the government was conducted both in its executive and legislative branches as if the Colonists had a Charter, one not regularly conferred having been, as it were in draft, taken and acted upon. In 1684 the Charter granted by Charles II. was with many others repealed by James II.'s *quo warrantos*, and in 1691 it was finally restored by King William.

The other Charters, at different times bestowed, were more or less ample in their grant of franchises. That of Massachusetts, in 1629, was framed in a very liberal spirit for the age ; that of Connecticut, 1662, was the most democratic of all. There were two assemblies annually elected by all freemen, with power to establish Judicatures, to levy troops, and in case of need to proclaim martial law, beside exercising the more ordinary legislative authority. A *quo warranto* in 1687 ordered this Charter to be delivered up ; but it was saved by being hidden in an oak tree, ever after the object of popular veneration. In 1664 the conquest of New York was made from the Dutch. In 1669 a constitution for the Carolinas was framed by the celebrated John Locke ; and so widely different is practical statesmanship from profound philosophy, that it was found altogether unmanageable, grounded on principles extremely illiberal, and wholly inconsistent with its author's theoretical love of freedom. It was universally disliked and vehemently opposed ; nor did the Colony, according to the common tradition, ever enjoy a day of peace or happiness under it, till in 1693 it was abandoned and the old government restored.

The constitutions of all the colonies were alike in their general principles, their broad outlines ; but they might be divided into three classes—the *Provincial*, the *Proprietary*, and the *Chartered* governments. To the first or Provincial class belonged New Hampshire, New York, New Jersey, Virginia, the Carolinas, and Georgia, forming by far the most important division of the whole. The government was vested in a Governor and Council named by the Crown, with an assembly chosen by the freeholders and planters. The Council concurred like our House of Lords in all legislative acts, and likewise assisted the Governor with their advice in the administration. He had the power of suspending the councillors, and of supplying vacancies in their body until the pleasure of the Crown could be known, as well as of calling, proroguing, and dissolving the legislature. The legislature was composed of the Governor, the Council, and the Representative Assembly, but it could make no laws repugnant to the common law of England, and all its acts required the ratification of the Crown. The Governor, with the Council's advice, could levy troops, establish courts, appoint magistrates, pardon offences, remit fines and forfeitures, and proclaim martial law in case of rebellion or invasion. From all the decisions of all the Courts an appeal lay, in these as in all Colonies whatever, to the King in Council.

Of the second or *Proprietary* kind were Maryland, Delaware, and Pennsylvania, in which the Proprietors appointed the Governor and the people chose representative assemblies, the Crown's approval being required in the two latter to give the laws passed validity, but not in Maryland. The Government in other respects resembled closely that of the first or Provincial description.

The third or *Chartered* Colonies were Massachusetts, Rhode Island, and Connecticut. The powers of the Governor and Legislature resembled those of the Provincial and Proprietary class, but the different branches were differently constituted. In Massachusetts the Crown appointed the Governor ; the General Assembly was chosen by the people, and the Council by the Assembly. In Rhode Island and Connecticut the Government was purely democratic, the Governor, Council, and Assembly being all chosen annually by the people, and the other officers being appointed by their authority. Nor was the Act of Parlia-

ment 7 and 8 Wm. III., c. 22, much, if at all observed, which required that the Governors in all Chartered and Proprietary Colonies should be appointed by the Crown.

It thus appears that originally all the North American Colonies were governed, as regarded the main foundation of their constitutions, upon the model of the English government. Those who planted them carried out with them their English notions of civil liberty, and indeed the northern portion of them was mainly peopled by persons who took refuge there to escape from civil, but above all from religious persecution at home, and to enjoy undisturbed in this new world that full liberty of faith and worship, those rights of conscience, which were denied to them in the old. In some particulars, even in some very important ones, these Colonial Constitutions differed one from another, but all had the leading features of the English Government; the general outline of all was the same. There were three branches intrusted with legislative power, one directly representing the Sovereign and named by him, except in two of the Colonies,—another deriving its existence from him, with the same two exceptions,—and a third owing its existence to the choice of the people in them all. The consent of all three branches was required for every legislative Act, and except in one Colony the Royal ratification of every legislative measure was further required. The executive power was separated from the legislative, being confided to the Governor, and the judicial power was independent of all the three authorities. These are the main outlines of the Constitution in the mother country, upon the model of which that of the Colonies was altogether framed.

It is unnecessary to enter into the history of the celebrated struggle between the mother country and the Colonies which ended in their final separation. The Colonists were Englishmen; they had carried with them to the new world those sentiments of freedom and independence with which they had been born and bred in the old; they had even aspired to more perfect liberty than their countrymen whom they had left in Europe enjoyed; and any acts of oppression from the Crown were sure to be resented and resisted by them. The structure of their governments, eminently democratic, and of their society, into which no patrician influence entered, fostered the same feelings and principles universally, and no attempt was ever made to in-

troduce among them an arbitrary power alien to the frame and spirit of their system. But it was apparent on all hands that the Colonial relation could not long continue after their great and rapid growth should give them a disproportionate magnitude to the people of the Parent state. The law strictly enforced a commercial monopoly, prohibiting after the manner of all the European States any intercourse of traffic with foreign countries, and requiring that both their supplies from Europe, their exports thither, and their whole navigation should be subject to this rigorous restriction, manifestly for the benefit of the mother country and to the constant and severe detriment of the Colonies. This might be submitted to in the infancy of American society; but when the people were numbered by millions, its continuance must needs come in question. Nevertheless, so long had the Americans been accustomed to the commercial yoke, that even when their numbers were three millions, and were doubling every twenty-three years, it did not excite resistance or even remonstrance; and had not another cause of quarrel occurred, the system of the Navigation Act would probably not have occasioned the severance of the connexion for some generations, till at length all the ties of language, laws, institutions, and kindred, would have proved unable to maintain so unnatural a state of things as an empire of eighteen millions of freemen subject to a people not much more numerous or more civilized than themselves on the other side of the globe. But be this as it may, certain it is that the master grievance of the American colonists, their commercial subjection, had no share in exciting their resistance to the mother country. They were fond of the connexion; they were proud of being Englishmen; they loved to form an important part of a mighty empire; they enjoyed personal liberty, civil and religious, in the most ample measure; and if they ever felt galled by the yoke of the monopoly, it pressed on them too lightly, it was too little felt as a separate and distinct grievance, and its weight had become too familiar to excite any resistance. The assertion of new prerogatives by England was necessary to cause the rebellion, and even that encroachment found the people so averse to separation, that a very little concession on the part of the Parliament and the people (who made common cause against the Colonies) would have certainly prevented the catastrophe which ensued, and



postponed the disseverance until, in all probability, the monopoly, with the growth of the Transatlantic Empire, finally brought the connexion, now become quite unnatural, to a close.

The dependence of the Legislature in the different Colonies had not at any time been assented to as indisputable, or borne without murmuring. As early as 1640 Massachusetts had protested against the position that the Acts of the Colonial Legislature were subject to the English Parliament, so long as they violated no principle of colonial dependence upon the mother country. In 1679, after strong representations to the same effect, the Legislatures in some of the Colonies declared by Acts of their assemblies that the Statutes of England did not apply to the Colonies unless where they were expressly named, or where the enactments regarded the colonial relation, and an infringement of them would interfere with their dependence. The 7 and 8 Will. III., c. 22, to which I have already referred, declared all laws made and to be made in the Colonies void, which were repugnant to the navigation law, or to any laws to be made in England naming the Colonies, and it also bound the Governors under severe penalties to prevent any laws from passing which should be in any way inconsistent with any English Act naming the Colonies. It is, however, certain that these provisions were not very rigorously enforced. The main security of the mother country consisted in the Governor being appointed by the Crown and his consent being necessary for the passing of all Colonial laws; and, except as regarded trade and the foreign relations of the Empire, the British Parliament scarcely ever interfered with the inhabitants of the Colonies.

Between the years 1764 and 1773, however, this abstinence ceased, and attempts were made to legislate in England for the Colonies, in the point by far most likely to excite irritation and resistance. Taxes were imposed by the Parliament in which the Colonies were not at all represented, and this raised an immediate opposition. As early as 1773 Massachusetts went so far as to deny all legislative power whatever to the Parliament; and although this doctrine did not immediately extend itself over the Colonies, in the course of a short time it became the creed of all Americans. Their remonstrances were disregarded; they armed themselves; they formed a Convention or Congress, to govern the whole Colonies with the exception of Canada, which, peopled

by Frenchmen and jealous of the Americans, took no part in the contest; and after a series of extraordinary successes, considering their inadequate resources for military operations, and an uninterrupted display of political wisdom as well as firmness and moderation, they finally threw off the yoke of the mother country, gloriously establishing their own entire independence and winning for themselves a new constitution upon the federal plan and of the republican form.

This is, perhaps, the most important event in the history of our species. Its effects were not confined to America. It animated freemen all over the world to resist oppression. It gave an example of a great people not only emancipating themselves, but governing themselves without either a Monarch to control or an Aristocracy to restrain them; and it demonstrated for the first time in the history of the world, contrary to all the predictions of statesmen and the theories of speculative inquirers, that a great nation, when duly prepared for the task, is capable of self government, in other words, that a purely republican form of government can be founded and maintained in a country of vast extent, peopled by millions of inhabitants.

The form of government thus framed and successfully established by the American people, under the guidance of some of the wisest and most virtuous statesmen ever called to administer national affairs, although republican and federal, was yet constructed on the principles of the British Constitution as nearly as the different circumstances of the Colonies would permit. The principal variations were the substitution of an elective chief magistrate personally responsible for one hereditary, and only responsible through his ministers and agents; the Upper House being elective like the Lower; and the nation consisting of a confederation of republican States, each independent in many essential particulars, but all combined as regards foreign relations under one head, and all governed by a Central Legislature, of powers limited by law as to its jurisdiction over each individual member of the Union, though quite absolute as to the general concerns of the whole confederacy and the federal relations of its component parts.

The affairs of the Colonies having during the revolutionary war been conducted by a congress of delegates from each, on the restoration of peace and the final establishment of their indepen-

dence, they framed thus a federal constitution, which was only gradually adopted by the different members of the Great League. Nine States having ratified it, the new form of government went into operation on the 4th of March, 1789. Before the end of 1790 it had received the assent of the remaining States. This assent was very variously given. In New Jersey, Delaware, and Georgia, the local legislatures adopted it unanimously; in Pennsylvania, Connecticut, Maryland, and South Carolina, large majorities approved; but in the other six States it was carried by small majorities, and in three of these, Massachusetts, New York, and Virginia, the voices were nearly balanced for and against it. Nevertheless this slow adoption and these great divisions of opinion are the best proofs of the ample deliberation which was bestowed upon so important a proceeding; and subsequent reflection did not fail to bring over the dissentient parties, so that it soon obtained a very general if not a universal assent.

The fundamental principle of the Constitution is, the vesting of the supreme authority, executive and legislative, in the people, to be exercised in every case by their chosen representatives, in no case except in their elections by themselves. And this at once distinguishes the great modern republic from all the Democracies of ancient times. The representative principle is fully and universally introduced into it, and the people depart completely with all their power to their chosen deputies. It is another and an essential principle, if indeed it be not involved in the former, that the choice of representatives\* and a chief magistrate is the only elective function exercised by the people, all civil and military officers, and especially all judicial functionaries being appointed by the executive Government.

The supreme legislative power is pronounced by the first article of this Constitution to reside in Congress, that is in the two Houses, not as here in the two together with the chief magistrate. We are therefore first of all to consider the constitution of that governing body, which consists of the House of Representatives and the Senate.

The House of Representatives is chosen every two years by each of the States in the Union electing Deputies, in the proportion of one for every 30,000 inhabitants.\* Their numbers are

\* This was the proportion originally. It is varied, as we shall presently see, periodically.

thus in most of the States always increasing, though in some, as Rhode Island and Delaware, they have remained stationary. In others the increase has been great. Thus Massachusetts sent originally eight, and sends now seventeen\* members; Pennsylvania from eight has risen to twenty-four; New York from six to thirty-four; and Ohio having at its admission into the Union in 1802 sent one member, sends now twenty-one, indicating that its population has increased at least in that proportion. The enumeration by which these numbers are regulated takes place every ten years. The whole number of members in 1790 was sixty-five, the population being then a little under four millions; in 1830 it had increased to nearly thirteen, and in 1840 it exceeded seventeen millions. The numbers now are 223. The numbers are not only taken, but the proportions of members to population are determined every ten years; at present it is one for every 70,680.

The qualification required of representatives is threefold. They must be twenty-five years of age complete; must have been citizens of the United States for one year; and must reside within the State which elects them. The right of election varies in different States, being enjoyed in each State by those who have the right of voting for the members of the most numerous branch of the State Legislature. Thus in Massachusetts there is a low property qualification; in some States all persons paying taxes vote; in others all paying a certain fixed amount. In the greater number of States the suffrage is nearly universal; that is, vested in all citizens of twenty-one years of age, and not paupers or convicts. Residence is in most States required, and in some the payment of a poll-tax.

The Senate is elected for six years; each State returns two senators; and the choice is made by the State Legislature either voting together or separately, according to the Constitution of each State. One-third of the senators retire every two years, and their place is supplied by a similar election. The qualification for the Senate is threefold—being thirty years of age, having been nine years citizens of the Union, and residing in the State by which they are named. The members of the Senate are at present fifty-two.

\* That is, the States of Massachusetts and Maine, into which the original State of Massachusetts was in 1820 divided, now send seventeen.

The Congress is composed of the two Houses, and it must meet once a year at the least. Its power to tax is unlimited, except that no duty or tax can be laid on one State or one condition of men exclusively, nor any financial advantage in any way given to any part of the Union; a restriction which it is obviously somewhat difficult to preserve strictly in practice, and which necessarily gives rise to many disputes. In the Congress also resides the important power of making war; but it can only vote supplies for maintaining an army during two years by any one act. This seems at first a departure from the model—the British Constitution; but it is rather in appearance than in substance a departure. The King in England can proclaim war, but without the sanction of Parliament his proclamation must immediately be retracted. The vote for the army, too, is for one year with us, and it is yearly renewed. In the United States, if the war continued, the vote would be renewed for two years or for one, as circumstances might require. The real and main difference is, that they have no standing army, or so small a one as only to serve for police, or to guard the weak points of their frontier. It is less than 7000 men; the militia amounting to 1,711,000.

In the House of Representatives resides exclusively the power of propounding taxes of any description, but not so exclusively as in England, because the Senate may alter and amend the supply bills. They alone can impeach any one, and the Senate tries the charge, a majority of two-thirds being required to condemn. A majority of each House forms its quorum, and is required for ordinary business. Each House has great powers over its members: it can expel by a majority of two-thirds; but a bare majority in all cases may pronounce censure, or decide on questions of qualification. The members of both Houses are paid for their attendance; all enjoy freedom from personal arrest for debt, and no one is answerable for his conduct in Congress. By an extremely injudicious provision no minister can sit in either House, nor any person holding any public employment. Hence the most effectual responsibility under which the servants of the State and its executive Government can be placed is destroyed; and neither an explanation of public measures, nor a chance of preventing errors by discussion, nor any opportunity of defending the Government's proceedings,

is afforded. The suffering amendments upon money bills is no doubt an improvement upon the English constitution; but there is still left a remnant of the same error on which our Commons claim the exclusive right of dealing with taxation. Money Bills can only originate in the House of Representatives, as with us they cannot in the Lords, on the ill-considered ground that the Lower House represents all who pay taxes, whereas the members of the Upper House, in both, pay an ample share, and our Peers moreover have no voice in choosing those of the Lower.

The choice of the President and Vice-President is somewhat complicated, being obviously so contrived from the feelings of jealousy which prompted the Venetian statesmen to adopt a still more complex mode of election. Each state appoints, in whatever manner its own legislature may direct, a number of electors equal to the whole number of those whom it sends to both the Senate and the House of Representatives, no person holding any office in or under the Government being eligible as an elector. The electors then meet and vote by ballot for two persons, one as President, and one as Vice-President; one of whom at least must not be an inhabitant of the State. A list of all the persons voted for, with the number of votes for each, is then transmitted to the President of the Senate; and by him, in the presence of both Houses, all the lists thus transmitted are opened. The votes are counted; and the person having the greatest number of votes as President is declared President, provided he has a majority of the whole number of electors appointed by all the States. If no person has such a majority, then the House of Representatives, voting not *per capita*, but by States, each State having one vote, chooses one of the three highest candidates as President. The same course is pursued in ascertaining the choice of the Vice-President, but if no candidate for that office receives a majority of the electoral votes, the Senate designates one of the two highest candidates as Vice-President.

The qualification of President and Vice-President is being thirty-five years of age, and having been fourteen years resident in the United States; and no person not a natural born citizen or a citizen at the time of the adoption of the Constitution in 1789 is eligible to either office.

The President is commander-in-chief of all the public forces, naval and military; but in the exercise of this trust he may

demand the assistance and advice of any officer or any constituted body in the State. He participates with Congress in a declaration of war as in any other act of legislation, but all negotiation is exclusively intrusted to him, subject to the consent of the Senate, two-thirds of whose voices are required to make any treaty valid. The same consent, but only of the majority, is required for his nomination to all offices, the appointment of which is not otherwise provided for, as ambassadors and judges. During the recess of Congress he fills up all vacancies, but such nominations only last till the end of the next session, unless confirmed by the Senate. He has also the power of removing from all offices held during pleasure. He has the right of refusing a Bill presented to him by the two Houses, but if he rejects it he must assign his reasons; these are considered by the Congress, and if two-thirds of both Houses again present the Bill, it has the force of law whether he consents or not. It has also the force of law when presented for the first time if he do not give his answer within ten days, to prevent his rejecting it by merely delaying to give his answer.

The Judges hold their office during good behaviour, as well those of the inferior as of the superior courts, and they can only be removed by an impeachment, in which case the President has no power of pardoning. Their salary cannot be altered during their tenure of office, but they have no retiring pensions.

The courts constituted in the United States are the Supreme Court and such inferior Courts as Congress may from time to time appoint. The jurisdiction of the Supreme Court extends to all cases arising not only between individuals of the same state, but to all questions between parties in different states, to all questions between different states themselves, to all matters connected with treaties, to admiralty and other maritime cases, and to questions affecting ambassadors and other public functionaries. In cases respecting ambassadors and other ministers, and in cases between different States, its jurisdiction is original; in all other questions it is appellate.

The criminal law and the civil law is, generally speaking, that of England, subject to such alterations as have at various times been made by the Congress or by particular States. There is no treason but that of levying war against the State or adhering to its enemies; and an attainder does not work corruption of

blood, nor any forfeiture except during the party's life. The Habeas Corpus Act cannot be suspended, except, during an actual invasion or rebellion, the public safety should require such an act of Congress. There can be no trial except by a jury. All crimes must be tried in the State in which committed, but of crimes committed in no State, Congress may by law appoint the place of trial.

The Congress may admit any State into the Union, but it cannot erect a new State within any of those already existing, nor unite any two or more without consent of their several legislatures. Any alterations in the Constitution may be taken into consideration provided two-thirds of both Houses recommend them; and then the proceeding is this:—If two-thirds of all the States agree by their several legislatures to call a Convention, it shall be assembled, and such amendments as it may propound in the Constitution shall be adopted if either the legislature of three-fourths of the States, or Conventions in three-fourths, shall agree to them, the Congress having power to appoint either the one or the other course. To this power of alteration there were in the original Constitution two exceptions, one of which has now expired; it prevented all alterations in respect of what was delicately termed the “migration or importation of such persons as any State now existing may think proper to admit”—in other words, the African Slave Trade. This was to remain untouched till 1808; and it is only fair towards the Americans to consider, *first*, that they had originally desired to have no slave trade, and that the Mother Country had most wickedly as well as most foolishly (if indeed there ever be any difference between these two things) refused to free them from this guilt; *secondly*, that they abolished the traffic the instant the Constitution allowed them. The other exception relates to the equality of the States. No change can in any way be adopted which shall deprive any State, without its consent, of an equal vote in the Senate.

We have now seen that this Constitution professes to lay down certain fundamental laws, which are binding not merely on the subject but upon the Congress itself, and upon all the State Legislatures. Hence arises this anomaly, that the supreme power is fettered: there is not, properly speaking, a supreme power; Congress is tied up: that is done by the American Con-



stitution, which in ours is held impossible; the hands of the Legislature are bound; a law has been made which is binding on all future Parliaments.

When we at first contemplate this state of things, it appears to be sufficiently anomalous; and yet a little reflection will show us that it is, at least to a certain extent, the necessary consequence of the Proper or Perfect Federal Union. There is not, as with us, a government only and its subjects to be regarded; but a number of Governments, of States having each a separate and substantive, and even independent existence, originally thirteen, now six-and-twenty, and each having a legislature of its own, with laws differing from those of the other States. It is plainly impossible to consider the Constitution which professes to govern this whole Union, this Federacy of States, as anything other than a Treaty, of which the conditions are to be executed for them all; and hence there must be certain things laid down, certain rights conferred, certain provisions made, which cannot be altered without universal consent, or a consent so general as to be deemed equivalent for all practical purposes to the consent of the whole. It is not at all a refinement, as we have already remarked, that a Federal Union should be formed; this is the natural result of men's joint operations in a very rude state of society. But the regulation of such a Union upon pre-established principles—the formation of a system of government and legislation in which the different subjects shall be not individuals but States—the application of legislative principles to such a body of States—and the devising means for keeping its integrity as a Federacy, while the rights and powers of the individual States are maintained entire—is the very greatest refinement in social policy to which any state of circumstances has ever given rise, or to which any age has ever given birth.\*

We are now to consider in what manner this is maintained in the Great Western Union; in other words, what provision is made for preventing either the States' Legislatures or the central body, the Congress itself, from overstepping the limits fixed by the Constitution.

In Greece there was an attempt (as we have seen, Part I. Chap. XIV.) to restrain by the Amphictyonic Council the several

\* The power of Congress in America extends not only over the different States, but over the inhabitants of each.

members of the Greek Confederacy, each within the bounds of what was deemed the Common Law duty (so to speak) of all. Nothing could be less perfect than the frame of this arrangement, as far as we are acquainted with its outline; nothing less successful than the operation of the contrivance; not to mention that it only professed to decide international points, those of war and alliance, and to redress grievances arising from the usurpation of one State upon another.

In America a very different and far more extensive provision is made for maintaining the Constitution and repressing all infractions of it, whether by the Central or the Local Legislatures. The States' Courts, and the Supreme Courts especially, have the right, and it is their bounden duty, to declare any given Law which may have been made with all the appointed forms of legislature, unconstitutional, as against the fundamental provisions of the Federal Union, or as against the laws of any given State, and to refuse it all operation and effect. Thus a law, a solemn Act by the supreme legislative power in one State, or by Congress itself—a Statute clothed with all the legal solemnities—a law, for example, to which the two Houses of Congress and the President of the Union have given their distinct assent—is declared illegal, is pronounced to be no law, is adjudged not to be binding, is treated as a mere nullity, because contrary to the Constitution; and this is done by Judges appointed to execute the Law, and to administer justice under it. Those Judges are required to regard the Acts of the Legislature as the Acts of agents appointed for a certain purpose, and clothed with certain powers; which purpose, if they have defeated, which powers, if they have exceeded, their Acts are held not to bind their principal, the People or the Constitution. All their Acts are considered as only valid in so far as they are executed according to the powers given by the Constitution to the Legislature, which is as it were the mere instrument of that Constitution. It is as if the powers of our several Treaties and Acts of Union with Scotland and Ireland were considered binding on all future Parliaments, after being sanctioned by the Legislatures of 1706 and 1800, and could not be altered except by a Convention summoned for the purpose; and as if our Courts of Law were required to hold illegal all Laws made by the Imperial Parliament contrary to these fundamental provisions or articles,

and to hold them mere nullities. It is not that until Congress formally repeals any given law, any Act inconsistent with it shall be deemed illegal, and treated as null and void, while a formal abrogation shall be valid and bind the Courts. This would resemble the Athenian Constitution, as we have seen in treating of the *Γραφή Παρρηγοριαν* (Part II. Chap. XVII.) But the American Constitution goes very much further; it denies to the Legislature the power to alter these fundamental laws, until a Convention of the people shall permit the change; and it treats as null and void any Act of innovation made by the Legislature before such Convention shall have given it warrant. This is the undisputed principle of the American Constitution, and is constantly acted upon. Its great importance requires that we should give some examples of the judicial power thus exercising its supremacy over the Legislative and Executive combined.

We begin with instances in which the States' laws, or laws of particular local legislatures, have been treated as unconstitutional and null.

The Constitution has reserved to Congress the sole power of regulating commerce, manifestly in order to prevent collision between the States. The legislature of New York granted, by an Act formally passed, an exclusive right of steam navigation within the waters of the State, to Livingston and Fulton. In the case of *Gibbons v. Ogden*, this Act was held unconstitutional by the Supreme Court of the United States in 1824,\* although in 1812 it had been decided in the New York Court of Errors that five such Acts in favour of the parties were constitutional and valid, upon the ground of the internal navigation of each State being exclusively within its legislative jurisdiction; but as Chancellor Kent, in his Commentaries,† observes, no question whatever was raised, either in the State's Court or the Supreme, of the Court's right to set aside any unconstitutional law.

In like manner a Bankrupt Law of New York, having a retrospective action, was declared void by the Supreme Court as impairing the obligation of contracts; and in *Olmstead's case* a Pennsylvanian law protecting certain individuals from the process of the Federal Courts was declared void, not only as against statutory enactment, but as inconsistent with the common law of the Federal Union. Laws of Maryland and Ohio, imposing

\* 9 Wheaton, 1.

† I. 437.

taxes on branches of the United States Bank established in those States, were declared void, as interfering with the exclusive powers of the General Government to regulate trade. In the case of *Green v. Biddle*\* it was held that, as a compact between two States came under the head of contracts (any law "to impair the obligation of which" is, by Art. 1, s. 10 of the Constitution, expressly prohibited), a law of Kentucky, called the "Occupying Claimant's Law," was unconstitutional and void, and the titles to a vast extent of land thus became invalid.

The right of the Supreme Court of the United States to declare a law passed by the General Congress and approved by the President null and void, on the ground of inconsistency with the Constitution, is not less certain. The case, however, is much less likely to arise, because the most learned and experienced men in the Union having seats in Congress, and the whole States being proportionably represented, it is much less likely that any Act of legislation should take place contrary to the fundamental law. This power of adjudging a law unconstitutional is also possessed by the Circuit Courts of the United States, subject, of course, to appeal to the Supreme Court at Washington. In 1791 the Circuit Court of New York declared void as unconstitutional an Act of Congress. These Courts are Federal, being held under judges, not of the particular State, but of the Union.

A similar power is possessed by the State or Local Courts, in reference to the Acts of the state or local legislatures. In *Whittingham v. Polk*, in 1802,† it was exercised by the General Court of Maryland; and in *Bowman v. Middleton*,‡ as far back as 1792, the Supreme Court of South Carolina declared unconstitutional an Act of the local Legislature, as being against common right and Magna Charta, because it took away a person's property without compensation. I mention this decision here, though referring to a State and not to a Congress Act, in order to show that a law may be declared unconstitutional which violates no express enactment or article of the written Constitution, but is only against the general or common law.

Not only may the Courts consider whether or not any Act of the Legislature is in its provisions unconstitutional; they

\* 8 Wheaton, i.

† 1 Haw. and John., 236.

‡ 1 Bay., 252.

may also examine the mode of passing it, and declare it null if the requisite forms of legislation have not been complied with. Thus in the case of *The State v. Macbride*,\* it was held that where the law requires a certain majority to pass a law on any given subject, if the Court finds that less than this majority did not assent, it shall declare the Act so passed void.

The State of New York till the year 1823 possessed a very important and salutary institution, one especially advantageous in a Federal Constitution. There was a Council of Revision to which all Acts of the State Legislature were submitted before they were finally passed into laws. The records of this useful body are said by Chancellor Kent to contain both eminent proofs of its ability, and "monuments of the wisdom, firmness, and integrity of the Council."†

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Beside the Constitutional Act and subsequent Acts, the works to be consulted on the American Government are Chancellor Kent's Commentaries (4 vols., 1840); Mr. Justice Story's Commentaries (1833); and Dr. Duer's Lectures (1843): Valuable matter will be found also in Mr. Gore Ouseley's Remarks on the American Institutions, and in Professor Long's American Geography. The superficial work of Lacroix is even more meagre and imperfect than usual on this subject. It is inconceivable that any one, but more especially a professor of public law, writing in Paris at a time when all men's attention was directed to the American Constitution, and the attention of some men directed to it very profoundly, should (beside other great omissions) appear to be wholly ignorant of the most singular portion of the whole subject, the supreme power of the Courts of Justice in declaring Acts of Legislation unconstitutional.

A very elaborate work was published in London by the elder President Adams, entitled a 'Defence of the American Constitutions,' in the year 1788. It is in three large octavo volumes; and abounds in references to the Governments of other Commonwealths, ancient and modern. But its principal object is to defend against the extreme democrats the restrictions imposed on the powers of the Lower Chamber by the addition of another Legislative body.

\* 4 Missouri Rep., 302.

† 1 Kent, 454.

## CHAPTER XXXI.

## GOVERNMENT OF FRANCE.—REPUBLIC.

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French Revolution—Its causes—Five Republican Constitutions—Abolition of Ancient Privileges common to them all—Constitution of 1791—King of the French—National Assembly—Elections—Executive Power—Royal Prerogative—Legislative Power—Judicial System—Tenth of August, 1792—Convention—Revolutionary Government—Constitution of 1793—Committee of Public Safety—Directorial Constitution of 1795—Two Councils—Elections—Choice of Functionaries—Powers and Proceedings of the Councils—Executive Directory—Judicial System—Court of Cassation—High Court of Justice—National Guard—Council of Revision—Revolutionary Proceeding of 18 Fructidor, 1797—Merits and Defects of this Constitution—Opinions upon it.

IN the first part of this work I endeavoured to trace the ancient monarchy of France from the earliest times down to the great era of the Revolution, and I showed that the refusal to correct manifest abuses, to relieve the people from intolerable burdens, to reduce the exorbitant privileges of the nobility, relics of Feudal times, to place some reasonable bounds to the oppressive powers of the Crown and its servants, in a word, the obstinately withholding from the country all the benefits bestowed by adapting the monarchical scheme of Government in some measure to the improved notions and increased intelligence of the age, was the cause of a change sudden and pervading, which swept away, in the course of a few weeks, all the ancient abuses, with most of the ancient political institutions of France, and, after a further delay of a few months only, subverted the monarchy itself.

That there were many grievances of which men had good right to complain, no one can doubt. Whatever of good the Constitution contained had become mixed with so much evil as impaired its practical efficacy; most of its better portions had long existed only in name; the people had no influence, and hardly any protection from the abuse of authority; and powers were possessed, and were constantly exercised by the Govern-

ment, wholly inconsistent with either personal liberty, or political independence. It is quite sufficient to mark the right assumed by the Sovereign to make laws, subject to a claim of the Parliament to have them acknowledged by registration, but a claim so ineffectual that, after their remonstrance, and a short delay, the registration could be easily enforced. An oppression still more practical and intolerable was exercised by virtue of another prerogative in constant operation. The Sovereign could banish or imprison any person at pleasure, without assigning a reason, without bringing him to trial, and without using the aid of any person responsible for the abuse of this execrable prerogative.\* It is very true that but few prisoners were found in the dungeons of the Bastile when that fortress was stormed by the people, and razed to the ground; but no one ever pretended that men were imprisoned by the score, or banished either. A few thus treated from time to time sufficed to strike terror into all discontented persons, and silence every murmur against the proceedings of despotism, or the grossest malversations of its minions; and, besides, imprisonment in the Bastile was by no means the only penalty to which malcontents were subjected by the Court, or the enemies of individuals by their procurement. No one can marvel at the indignation of mankind breaking forth against so detestable a system—no one can avoid regarding the summary destruction of it as a warning to other tyrannical Governments, and a warning which may prove salutary to himself, or useful to his subjects, according as each absolute Prince shall have the wisdom to profit by the lesson, or the obstinacy to leave his people no alternative but following the example.

There were five forms of Government successively established in France upon the ruins of the old system: that framed in 1791 by the first, or Constituent Assembly, as it was from thence called; that proclaimed, but never acted upon, when the republic was established in autumn, 1792; the Conventional or Revolutionary Government, which was substituted for it; the Directorial Constitution of 1795; and the Consular Government of

\* The qualification that the person obtaining a *Lettre de Cachet* was liable to an action of damages if it was improperly obtained, is sometimes mentioned as annexed to the use of this royal power. Nothing can be more futile; for the Crown was not bound to disclose the reason of an order thus issued, and a Minister using it was not responsible at all.

Christmas, 1799. It will presently be seen why we are to regard all of these as Republican, even the first, which was nominally monarchical. Although these Constitutions were of transient existence, yet they did not pass away without leaving deep traces of their mighty power in the history of France and of the world. The consideration of their provisions is also fruitful of instruction respecting the spirit of the times and the temper of the people, and throws much light upon the genius of the democratic system. We must therefore examine them in detail before proceeding to view the wiser and more desirable form of polity which has arisen out of their ruins.

Some things they all had in common—things of a negative kind—and embracing the destruction of the old abuses. Of these the greater part remain to this day. This destruction of abuses involved also the destruction of ancient institutions essential to monarchy—institutions which we shall afterwards find have not been restored in sufficient force to be of their full use as props to even the constitutional throne of a limited monarch.

All distinction of ranks, all peerage, nobility, titles of honour and of knighthood were abolished. No distinction of rank was suffered to remain, save that derived from place in the actual service of the state; and no office whatever was allowed to pass either by inheritance or by purchase. All feudal rights were abolished, including both offices and administration of justice, and privileges and services, and other proprietary rights. With these oppressions upon the industry of the country, were also swept away all those upon that of the towns; no exclusive corporate rights were suffered to affect either arts, or trades, or professions. Monastic vows were forbidden, at least they were declared to have no force or effect, and the most entire liberty of religious opinions and worship was proclaimed. The freedom of speech and of writing on all political subjects was, in like manner, announced, as far as any previous censorship was forbidden, and peaceable assemblies of the people were freely permitted, as well as carrying arms for self-defence. Institutions for relieving the poor, and for popular education, were promised, and a general code of laws to govern the whole kingdom.

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The Constitution of 3 Sept., 1791, vested the supreme power in a chief magistrate, termed the *King of the French*, and a *National Assembly*, of a single House or Chamber. The Assembly consisted of 745 members, independent of those who might be added to represent the colonies. Each of the eighty-three Departments into which the kingdom was divided sent three, and Paris one, making 247 for the country; 249 were allotted to the population, that is, given in respect of numbers merely; and 249 were given in respect of taxes paid by the districts. The choice of these representatives was vested in *Electoral Assemblies* appointed by the people voting in *Primary Assemblies*, the voters being those who were termed *active citizens* (*citoyens actifs*), that is, who were twenty-five years old, resided in their district, and paid direct taxes equal to the value of three days' labour, this value to be fixed every six years by the legislature. No person could have a vote in more than one district, and the only exceptions among those thus qualified were, conviction of a crime, and bankruptcy and insolvency not followed by the acquittance of creditors. The Electoral assemblies thus chosen by the Primary consisted of one elector for every 100 active citizens; two from 150 to 250, and so on in proportion. The qualification of electors was being assessed, if in towns of 6000 inhabitants and upwards, in a sum equal to 200 days' labour as owner, or 150 as tenant; if in a smaller town 150 as owner, and 100 as tenant; and if in a rural district 150 as owner, and 400 as tenant; so that the qualification for the Primary Assemblies may be put at three shillings taxes, for the Electoral at from seven to ten pounds. Hence, though the franchise for the choice of electors was very extensive, that for the choice of representatives must have been extremely limited. Indeed it should seem as if in some districts there would be a difficulty in finding the number of electors required by law, for there must surely have been many villages of 700 or 800 houses, that is, 150 or 160 heads of families, in which two persons could not be found paying so much as ten pounds direct taxes, that sum corresponding to a very considerable property.

All citizens were eligible as representatives, excepting those holding any office during pleasure under the Crown, whether civil or military, all the Royal household, all persons engaged in the administration of the finances, or Crown lands, all muni-

cipal officers, all officers in the National Guards, and all judicial functionaries. Thus care was taken to keep the legislative body wholly separate from all the other parts of the Constitution, and to secure numerous occasions of conflict and collision with the executive power. If any Judge was elected he might sit, provided his place was supplied in his Court by another; and with every three Deputies chosen in any district there was also chosen one *suppléant*, or substitute, who might sit in case either of the others should be found, or should become, disqualified. The election of the Assembly was for two years; and any person might sit in two successive assemblies, but not in a third without retiring during one turn. The King had no power to adjourn, prorogue, or dissolve this body; and its members enjoyed absolute protection from all civil process, from all proceedings against them for their conduct in the Assembly, and from all criminal proceedings also, unless the Assembly, upon a charge being communicated to it, should be of opinion that there were grounds for the accusation. Each member took a solemn oath to be faithful to the nation, the law, and the King, and never to propose anything or consent to anything which could invade the Constitution established in 1789, 90, and 91 (*porter attente*), so that those three years were deemed and taken to be years of absolute infallibility, whose produce must for ever after be saved from further improvement or change. We are now further to examine the quality of that produce; and in passing we may remark on the hideous spectacle presented by 745 well-educated Frenchmen, in respectable spheres of life, solemnly swearing that oath, and in less than twelve months after utterly violating it in every essential particular.

The executive power was vested in the King; females being excluded both from succession to the Crown and from the Regency. During his minority under eighteen years old, or his incapacity, the Regency was given to the next heir, not being sovereign of a foreign state; and in the event of the next heir being disqualified, the Electoral Colleges were to choose electors of the Regent, with instructions regulating their choice, and confining their functions to the election of a Regent. The King's oath to observe the Constitution was to be taken within one month after his accession, otherwise his abdication was inferred;

so it was if he either joined any foreign invasion or did not disclaim any enemy professing to use his name, or left the country and did not return when invited by the Assembly; and after abdication thus presumed he was responsible for his whole conduct. All his private estates became crown or national lands immediately upon his accession.

The person of the King was declared to be inviolable, and his ministers alone to be responsible for his acts, all of which must be countersigned in order to secure a person subject to the law. He had the sole power of appointing and removing his ministers; but no member of the Legislature, nor any Judge of the Court of Cassation, could be a minister, nor could any member of the Assembly ever hold any office of profit created while he sat, nor any office of profit whatever under the Crown for two years after he had ceased to be a member. The command of the forces, both by sea and land, was vested in the King; he had the nomination of the Commander-in-Chief, but he had only the nomination of two-thirds of the Vice-Admirals, and one half of the Lieutenant-Generals, and Captains, and Commanders of the National Guard, the Assembly naming the rest. He could only propose the declaration of war to the Assembly, which must decree it, and he could make no binding treaty without its approbation. He was also obliged to treat, if desired by the Assembly. He named all Ambassadors and conducted all negotiations, and disposed and moved all the forces. Upon the measures of the Assembly he had a veto; but if two successive Legislatures passed the same bill, it became a law without the Royal assent.

The Assembly had, beside the nomination of part of the officers, the exclusive right of regulating and providing for its own police, of regulating the administration of municipal offices, of making acts touching ministerial responsibility, and of everything regarding the collection of taxes. In none of these particulars could the King interfere. As no distinction of ranks was allowed, the King had no prerogative respecting honours; and the Assembly alone could confer honours on deceased citizens. He had no power to adjourn, prorogue, or dissolve the Assembly. All the powers of Government, not now enumerated as vested in the Crown, were entrusted absolutely to the Assembly itself, which was in fact both the legislative and the

executive body in the State, nor could the slender authority vested in the King be supposed any counterpoise; so that the Government was really a Democracy. Likewise the number of the forces was too small to give the Crown any real power beyond what the Constitution entrusted him with. Beside the National Guard of Honour, only 1200 foot and 600 horse were allowed to be kept up.

The Judicial system was by far the most imperfect portion of this Constitution. The Judges were all unpaid, and all chosen by the people in the Electoral Assemblies. Once chosen, they could only be removed on conviction of crimes. The King named Commissaries to each Court, whose duty it was to keep the Judges in mind of the law, but who had no voice in their decisions. They were entrusted with the execution of all judgments. The High National Court, before which all impeachments at the suit of the Assembly were tried, was composed of eight Jurors, together with members of the Court of Cassation, the Supreme Court of Error over the whole Courts of the country, but chosen like them by the people. The Public Prosecutor was elective like the Judges; and this perfectly vicious judicial system was continued down to the Consulate, being adopted into the much less imperfect Constitution of 1795, that of the Executive Directory, and two Councils.

Such was the vaunted Constitution of 1791, the great work of the first or Constituent Assembly, extolled as a monument of political wisdom, and regretted after a still worse system of crude legislation had established the anarchy which was only controlled by the reign of terror and of blood.

The existence of this most imperfect machinery was less than twelve months' duration. After the revolt of the 10th of August, 1792, and the consequent deposition and imprisonment of the Royal Family, a Convention was summoned, its members being chosen by all persons of twenty-one years of age, and having themselves only the qualification of being twenty-five years old. On the 21st of September they abolished Royalty; on the 25th they proclaimed the Republic One and Indivisible; on the 23rd of January, 1793, they devoted the King to die; on the 6th of April they entrusted almost absolute power to the Committee of Public Safety; and while this celebrated body displayed its genius for affairs by restoring tranquillity at home and establishing

victory abroad, on the 24th of June the Committee proclaimed a new Constitution, which was from the first plainly seen to be wholly impracticable, was immediately suspended, and was in all probability never intended to be carried into effect.

This master-piece of wild democratie entrusted the supreme power to an Assembly of Deputies chosen yearly, in the proportion of one for every 40,000 of the people, which would have given a total of 600 members. Every 200 citizens were to choose in a Primary Assembly one elector ; and no qualification was required either of electors or members. The Assembly thus chosen was to name an Executive Council of twenty-four out of candidates proposed by the Electoral Assemblies, who were thus yearly to appoint the Executive Government. The Executive Council was to dispose of the forces, name the foreign ministers, and conduct all military and diplomatic operations.

This matchless plan was no sooner proclaimed than it was suspended, and the Government was declared to be Revolutionary until the restoration of peace. All authority was vested in the Committee of Public Safety ; and by the terror which its proceedings—vigorous, stern, sanguinary—inspired in all men, the Convention became the passive instrument of its will, securing the co-operation of the people by the exciting publicity of its proceedings, without in the least controlling the executive power or impairing its dreadful and concentrated energy. In this state the Government remained until the year 1795, when the experience of the past having shown the necessity of a less revolutionary system, a new Constitution was adopted on the 22nd of August, far better suited to the circumstances of the country, and far less repugnant to the principles of sound policy, than those which had gone before it.

The supreme legislative power by this Constitution was vested in Chambers, called *Councils* ; the Executive in five functionaries, called the *Executive Directory*. The Councils were two in number, one called that of *Five Hundred* ; the other the *Ancients*, consisting of 100 members, and both elected by the people through a double election. For this purpose, and for the purpose of other appointments by the people, Primary Assemblies were holden yearly of not less than 450 nor more than 900 citizens. Each assembly chose its President, Secretary, and three Scrutineers. The duties of the Primary Assemblies were to

consider changes in the Constitution when those should be proposed by the *Council of Revision*; to choose electors, that is, persons to elect the members of the Councils and other functionaries; and to choose *Juges de Paix*, municipal administrators of country districts, municipal officers in all towns of above 5000 inhabitants. They chose electors in the proportion of one to every 200 voters up to that of seven for 900 voters, the greatest number in any primary district; and their proportions were to be settled once in ten years. The electors thus yearly chosen must be changed every year, and could only be re-elected after an interval of four years; their age was twenty-five at least, and they must have an income of the value of 200 days' labour if proprietors, and 150 if tenants where the town contained above 6000 inhabitants, where less, an income of 150 and 100 respectively; and in the rural districts the incomes were 150 for proprietors and 200 for tenants. The Electoral Assemblies could only sit for ten days, could receive no petition or address, or deposition, could hold no correspondence with any other assembly, could discuss no subject save the elections confided to them, and none of their number could take the title of electors, nor meet together as such, after the ten days expired. Those Electoral Assemblies chose the members of both Councils, the Judges of the civil tribunals, and the Court of Cassation, the Jurors of the High National Court (*Haut Jury*), the Presidents, Public Prosecutors, and Clerks of the criminal tribunals, and the Financial Administrators of the department.

From the Chambers all persons in office were excluded, except the Keeper of the Public Archives. Thirty was the age required for the Five Hundred; forty for the Ancients. One-third of each went out yearly, and a member could only be re-elected for four years, after which he must be out for two before he was re-eligible. The President and Secretary of each Council were chosen monthly; each had the control of its own internal police, but could only punish its members by censure, or by arrest for eight or imprisonment for three days; and strangers could only be admitted to the sittings in the proportion of one-half the number of members. Two hundred was the quorum of the Five Hundred; 126 of the Ancients. The members of the latter must be either married men or widowers; bachelors could sit in the former. The members of both Councils received a

yearly salary equal to 600 cwt. of wheat, or about 400*l*. Both Councils were obliged to meet in the same place, but in different chambers, and the Councils had the sole right to fix the place and even the town where they should assemble. If a clear majority of each should not, within twenty days, assemble at the place thus appointed, the Electoral Chambers were required to meet and choose a new Legislative Body.

The Five Hundred alone had the power of suggesting any law, which the Ancients could only adopt or reject, and that in the whole, without power of altering or amending. If both Councils agreed, the measure became a law immediately; but in the Five Hundred it must be read and agreed to three times at the distance of ten days between each reading, unless both Councils declared that there was *urgency* or an occasion for special dispatch.

The five members of the Executive Directory were chosen by the Ancients from a list of fifty presented by the Five Hundred, the ballot being the mode of voting in both Councils. No person could be a Director who was not forty years of age, and had not been either a member of the Legislative Body or a Minister. Every year one Director went out by lot. They presided in their turn each for three months. No resolution could be taken if three were not present. No Minister could be a Director.

The Directory had the entire command of the national forces, but no Director could himself be a commander, nor for two years after quitting office. They appointed all military and naval officers, and all ministers and other public functionaries not chosen by the Primary or Electoral Assemblies. They had a guard of 120 foot and as many horse, and salaries equal to 1000 cwt. of wheat, and were lodged in the Luxembourg Palace. The Directors had the power of proposing any measure of legislation to the Five Hundred, but only in substance and not in the form of a law. They superintended all police, and appointed to all courts commissaries to see that the law was observed, and to superintend the execution of judgments and sentences. They could arrest any person, but were bound to send him to trial within two days. They could not arrest any member of the Legislature unless the Council to which he belonged decided that there was ground for the charge preferred. They

could not bring any body of troops within twelve leagues from the place where the Councils met.

The judicial system had the same grievous defect which we have seen embarrassed that of the former Republican Constitutions. It was elective and gratuitous. The Primary Assemblies chose the Juges de Paix, the Courts of the first instance; all Judges and Jurors must be thirty years of age. A Juge de Paix was chosen only for two years, but was re-eligible. There were two for each district (*arrondissement*). In each department there was a civil tribunal of twenty members, with a Commissary and his substitutes, named by the Directory. These Judges were chosen for five years, but re-eligible. They decided on appeals from the Juges de Paix and the Tribunals of Commerce and Arbitration. Arbitrators, however, had the power of final decision, unless an appeal was reserved by the terms of the submission. The Correctional Tribunal for each department consisted of two Juges de Paix, a Commissary of the Directory, and a President taken from the civil tribunal in rotation and holding office for six months. All offences were first found by a Grand Jury, then tried by a Petty Jury; and all votes were by ballot. In each department was also a Criminal Tribunal composed of a President, four Judges of the Civil Tribunal, a Public Prosecutor, and the Directory's Commissary. To it lay an appeal from the Correctional Tribunal.

The Court or Tribunal of Cassation was appointed for the whole Republic, and it had only cognizance of points of law and errors in procedure; it was the Great Court of Error for the whole State, as our House of Lords is, except in appeals from the Courts of Equity. This important Court was composed of as many members as amounted to three-fourths of the number of the Departments, and one-fifth went out yearly. They were chosen by the Electoral Assemblies, who at the same time named substitutes to replace them in case of death or disqualification. To this Court the Directory named a Commissary with substitutes.

The High Court of Justice was composed of five Judges from the Court of Cassation, two Public Prosecutors, and eight members from a Jury named by the Electoral Assemblies and called the *Haut Jury*, each Department sending one. The five



Judges were chosen by ballot out of a list of fifteen named by lot from the Court of Cassation. The Court of Cassation likewise named the two Public Prosecutors. The Legislative Body decreed the meeting of this High Court of Justice, and its office was to try public functionaries on the accusation of the Legislature.

The National Guard was composed of all citizens of the military age. It chose its own officers. It consisted of two bodies, *sedentary* and *active*; the former doing the police duty of the capital, the latter being moveable, under Commanders-in-Chief named by the Directory, and in fact being the regular army.

The power of taxing rested wholly with the Legislative Body; the collection and superintendence of the revenue with the Directory. War was decreed by the Legislature on the proposition of the Directory, who could act, however, on any sudden emergency, but must immediately communicate its proceedings to the Legislative Body for approval. The Directory also named Ambassadors, and conducted all negotiations, but no treaty was valid until ratified by the Councils.

The Constitution might be revised in any particular every nine years, if a proposition to that effect were made three times by the Councils and approved by the *Council of Revision*, consisting of two members for each Department, elected as were the members of the Legislative Body. After this Council had agreed to any change it must be submitted to the Primary Assemblies, a majority of whom could adopt or reject it.

Such was the celebrated Directorial Constitution of 1795; it was approved by 1,057,390 votes in the Primary Assemblies, and only rejected by 49,977; it lasted much longer than any of its revolutionary predecessors; having continued for upwards of four years, when Napoleon overturned it by the Revolution of 18 Brumaire, November, 1799. But it had not been suffered to remain in full force all that time. The elections in 1797 had returned to both Chambers, but especially to the Five Hundred, so many Royalists, and the discontent with the Directorial Government had become so great, that a counter-revolution was inevitable; when three of the Directors, Barras, Rewbel, and Lareveillère Lepaux, combining against their colleagues, Carnot and Barthélemy, by aid of a military force

expelled and transported so many members of the Council that they obtained a complete and secure ascendant among those who remained, and continued to govern the country for two years longer without any new inroad upon the frame of the Constitution.

On the merits of this scheme of Government there have been, as might be expected, various opinions ; but all men allowed its great superiority to the Constitutions of 1791 and 1793,\* both in the greater regularity of its structure, in the exclusion of turbulent and popular proceedings, in the limitation of the electoral rights, in the construction of the Executive Power, and in the addition of a Second Chamber somewhat differently constituted from that of the more numerous Republican body. Its defects are, however, glaring ; the Directory was ill adapted to sustain the burthen of Executive duties with unity and vigour ; the Primary Assemblies had still too exclusive a power ; the Electoral Body was vested with patronage naturally belonging to the Executive ; there was no security for the influence of the latter in Legislative proceedings ; there was no provision for the real responsibility of public functionaries, by their sitting in the Chambers ; and the judicial system was as defective as ever. I cannot, therefore, entirely subscribe to my distinguished friend M. Mignet's panegyric ; which must, however, be allowed to speak the sense of by far the greater number of political reasoners in France.† “*La prévoyance de cette Constitution était infinie ; elle prévenait les violences populaires, les attentats de pouvoir, et pourvoyait à tous les périls qu'avaient signalés les diverses crises de la révolution. Certainement si une Constitution avait pû se consolider à cette époque, c'était la Constitution Directoriale. Elle refaisait le pouvoir, permettait la liberté, et offrait aux diverses partis l'occasion de la paix, si chacun d'eux, sans arrière pensée, ne songeant plus à la domination exclusive, et se contentant du droit commun, eut pris sa véritable place dans l'état.*”

\* There is not, however, the least of that superiority which some writers have ascribed to it ; for example, Mr. Alison, who supposes the plan of Primary and Electoral Assemblies to have now for the first time been devised, whereas it was most notoriously part of the Constitution of 1791.—*History of Europe*, ii. 683.

† *Hist. de la Rév. Franç.*, ii. 165.

## CHAPTER XXXII.

## GOVERNMENT OF FRANCE.—CONSULATE—EMPIRE.

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Return of Napoleon—Sièyes ; his Genius—Constitution proposed by him—Grand Elector ; Tribune ; Council ; Legislative Body ; Conservative Senate ; Droit d'Absorption—Consular Government—Choice of Functionaries—Their Removal—Conservative Senate—Tribune—Legislative Body—Process of Legislation—Judicial System—Consuls—First Consul's Power—Its extensive Nature—Checks found inconvenient—Change in 1802—Consul's Power extended in the Provinces—Senate subjected to him—Other Powers added to him—Tribune changed—Minister of Justice—Consul for Life, and Successor named by him—Imperial Dignity—Emperor's Power—Dignitaries and Nobility—Tribune further restrained—Finally abolished, and Emperor absolute—Limited Monarchy of 1815—Resemblance to the English Constitution.

THE return of Napoleon from Egypt, the gross mismanagement of public affairs during his absence, and, above all, the reverses of fortune which had befallen the arms of the Republic ever since the light of Carnot's genius was withdrawn, by his banishment in 1797, prepared the way for the 18th Brumaire, and a new Constitution was promulgated, after a short interval of provisional Government. But it may not be uninteresting first to give an outline of the form of polity devised by Sièyes, one of the authors of this new change, and which he pressed with his wonted sternness on his coadjutors, which, with his accustomed dogmatism, he refused to support with any reasoning, which was rejected, as a whole, with the contempt due to so impracticable and absurd a scheme, but which many political inquirers still admire as a work of profound sagacity and extraordinary fertility of combination, the master piece of its author's constructive genius, and which certainly furnished the suggestion of several very important branches of the Constitution actually adopted.

At the head was placed a great functionary, called the *Grand*

*Elector*, or *Proclamateur-Electeur*, endowed with a revenue of a quarter of a million sterling for his personal expenses and the support of his dignity, having the Palace of Versailles as his residence, holding his place for life, attended by a body-guard of 3000 men, and wholly irresponsible. He was to represent the nation in its intercourse with Foreign Powers, and to have a deliberating Council of responsible Ministers. In him was vested the whole patronage of all judicial places, from the humblest judgeship to the highest, and of all administrative offices, from the mayoralty of small towns to the place of Minister of State. This Grand Functionary, however, was to be wholly incapable of governing, or of doing any one act, or commanding any one act to be done, beyond the choice of the public servants at home, and the Ambassadors abroad. This peculiarity it was that made Napoleon, for whom the place was destined, ask if they supposed he would submit to hold the position of a fatting pig with a large salary.

The Executive Government, thus taken from the Grand Elector, was entrusted to a Council of State and to Ministers. The Legislative power was vested in a Legislative Body, before whom another Body, called the *Tribunate*, and consisting of Tribunes acting for the people, but holding their office for life, was to argue for or against measures, and before whom the Council of State was also to argue for their own propositions. The sentence of the Legislative Body was to be law, owing its origin to a kind of judicial proceeding, and having the attribute and form of a final decree.

Primary Assemblies, in the proportion of one tenth the number of inhabitants, were every two years to prepare parish (*communal*) lists of candidates, out of which Electoral Colleges were to choose every five years provincial candidates, and from these every ten years national candidates were to be selected, from whom the Grand Elector was to name all functionaries. But these, though not removable by him, were removable by the people omitting them in their periodical lists of candidates. With the Tribunate and the Legislative Body he had nothing whatever to do. The former consisted of the first hundred of the national candidates; the latter were chosen directly by the Electoral Colleges; and the initiative of all laws was given to the Tribunate. There was to be a Conservative Senate, act-

ing as a Court of Appeal, or Cassation, from the Legislative Body on any matter brought before it by the Tribunal. The Senators were incapable of holding any office. The Senate had a right to absorb, *droit d'absorption*; it could at any time take into its own body, and thus disqualify from all office, any ambitious chief, or popular Tribune, who might appear to endanger the stability of the Constitution. It will presently be seen that, although the distinguishing peculiarity of this plan, the making the chief magistrate a *fainéant*, with extensive patronage and ample revenues, was not at all adopted, the Tribunal and Conservative Senate, and the renewal of functions by the people, were adopted by the provisions of the Constitution established on the 13th December, 1799.

Hitherto we have been examining Revolutionary Constitutions, which were either purely and in name Republican, or substantially Republican, under the outward form of monarchy, and the project of Sièyes would have belonged to the former class. But the Constitution of 1799, which we are now about to consider, departed far indeed from the Republican model; and as soon as the chief magistrate, by a slight change in its arrangements, became invested with his power for life, and was allowed to name a successor, the Government was, to all intents and purposes, a monarchy, and a monarchy approaching to absolute.

The power of choosing persons eligible to be public functionaries in Arrondissements was given to all citizens of twenty-one years old, and who had resided a year in that district; they were to choose one tenth of their numbers as persons eligible. The persons thus selected were to choose a tenth of their number, and the union of all the tenths in a Department gave the list from whom were to be taken the functionaries of that Department. From this Departmental list a tenth being chosen were to furnish the National functionaries. These elections subsisted for three years, when any names might be omitted, and others substituted. So far we perceive the plan of the Abbé was followed, perhaps in its best and most practical part; except that the omission gave a power of removal neither consistent with good government, nor likely to be exercised without intrigue; and that limiting the choice to a tenth of the inhabitants appears reconcilable to no principle whatever.

The chief body in the state was the Conservative Senate of eighty members, holding their places for life, and being each fifty years of age at least. Their numbers were at first sixty, all named by the three Consuls; and two were to be added yearly for ten years, that there might be eighty in all. They filled up the vacancies in their own body, and made these periodical additions to their numbers from three candidates presented to them by the First Consul, the Tribunate, and the Legislative Body. They were incapable of holding any other office whatever, but each Senator had appointments equal to one-twentieth of those given to the First Consul, or about 1000*l.* a year. This Senate chose all the national functionaries: the Tribunate, the Legislative Body, the Consuls, the Judges of the Court of Cassation, and annulled all acts of the other bodies which were made in violation of the Constitution.

The Tribunate consisted of 100 members, the age being twenty-five; and a fifth went out yearly, but were re-eligible as long as they remained on the national list. Their salary was about 15,000 francs, or about 600*l.*

The Legislative Body consisted of 300, their age being thirty; one-fifth went out yearly, and could only be re-elected after a year's retirement. The sittings of this body were four months every year, and oftener if the Executive Government assembled them. Their salary was 10,000 francs, or about 400*l.*

The Tribunate and Legislative Body sat in public, and admitted each 200 strangers. The most extraordinary part of this Constitution was the process of legislation. All laws must be propounded by the Executive Government to the Tribunate, and by them to the Legislative Body—which was confined in its functions to hearing the Tribunate, represented by three of its members, and the Council of State, and could only decide, without the power of debating. It voted by ballot. It may be questioned if the Abbé himself could have surpassed this arrangement. The *Juges de Paix* were chosen by the Electors in each district, and held their places for three years; their principal office was to act as Courts of Reconciliation between parties, and to prevent recourse being had to the Courts of Law. There were for each Department a Civil Tribunal and Court of Appeal. The Government named all the Judges of these, as well as of the General or Central Court of Error, the Court of Cas-

sation; and the Public Prosecutor attending each Court was the Government's Commissary. Offences were presented by a Grand, and tried by a Petty, Jury sitting with the Judges.

At the head of the whole system were placed three great magistrates called *Consuls*, the First of whom had a salary of 20,000*l.*; the others of 6000*l.*; and they were appointed for ten years, at the end of which time the First became *ex officio* a Senator. They were, however, all re-eligible. The First, or Chief Consul, was in reality the Chief magistrate of the Republic, and his powers were ample, extending in every direction through the whole system of the State. If the Abbé's plan had been adopted in framing the list of candidates for office, and in appointing the aggregate bodies who were to administer the legislative power, in all that related to the chief magistrate there was certainly the greatest imaginable departure from it. The First Consul formed a perfect contrast to the Abbé's *Proclamateur-Electeur* in all but his extensive patronage. He had the sole command and disposal of all the forces of the State, being only bound to consult his colleagues, not to follow their advice; and even without consulting them he appointed all the officers of the army and navy. He named all the Judges, except the *Juges de Paix*; appointing the Civil and Criminal Judges, except those of the Court of Cassation. The Judges, however, were for life or good behaviour. He likewise named the members of the Council of State, and removed them at his pleasure. He was bound to name all functionaries from the electoral lists. He conducted all negotiations and appointed all Ambassadors, as well as all Ministers of State and other public functionaries, and even the members of local and of municipal administrations. The two other Consuls were to join him in all acts of Government, except the nomination to office and the disposal of the public force; but though he was to consult them, they had no power beyond that of recording their dissent, if they differed with him, and their reasons; like our Indian governors, by an admirable arrangement to secure deliberation and responsibility without impairing the unity and vigour of the Government, his voice was supreme though he stood alone. War, peace, ratification of treaties, the Consuls proposed to the Legislative Body, which decreed them or refused them at its pleasure; but the Government had the right to require that such questions should be discussed at secret sittings of

both Tribune and Legislative Body. The Consuls propounded all laws, and could withdraw their proposition in the course of its discussion before the Tribune or Legislative Body. They were also entrusted with the general execution of the laws. They had the power of arrest, but must bring to trial within ten days whomsoever they so seized. They had the disposal of the national guard *en activité*; but not of the sedentary or police guard.

When we consider the power of appointment and removal of all officers, civil and military, thus vested in the First Consul, except the Judges of Cassation, Juges de Paix, and Commissioners of Accounts, the absolute power over all administrative acts possessed by him, and subject only to the unavailing protest of his subordinate colleagues, the exclusive right which he thus had amongst others of proposing laws, the nomination by him of the Conservative Senators, all but the twenty to be periodically added by themselves, the nomination by his nominees of the whole Tribune and Legislative Body, over whom the people had no direct control except that of dismissing them at the end of three years, we can have no doubt that the Consul had the entire control of the Government in his own hands, subject only to the slight checks which he might receive from occasional opposition arising in the Senate which he had named directly, or the Tribune and Legislative Body which he had named through the Senate, and subject to the removal of his members and of the members of those bodies by the people at the expiration of three years.

But in a short time it was found that these checks, insignificant as they were, gave Napoleon some uneasiness. The sittings of the Tribune were open, and some of the Tribunes were men of talents and energy. An opposition sprung up in this body, and the people on reading its debates took part with it. All the brilliant victories by which the Consul signalized his accession to supreme power, and the continental peace which he was enabled to dictate, and which the infatuation of Mr. Pitt's Government suffered by refusing to negotiate with him, were not sufficient to silence the discontent of the nation, or to make the people forget the republican times in which they had played a part so different from that now assigned to them. He thought himself under the necessity of reinodelling some material parts



of the new Constitution in less than three years after it was established by the assent of 3,011,007 votes against 1562 dissentients. On the 4th of August, 1802, these changes were promulgated in an organic *Sénatus-Consulte*, or decree of the Conservative Senate.

The first observation that occurs upon this change is, that there was nothing in the Constitution of 1799 to authorise the Conservative Senate thus changing the Constitution; its power, on the contrary, was confined to that from which its name was derived, to annulling all acts made against the Constitution placed under its especial protection. We may next observe, that the checks interposed by the elections, the independence of the Senate, and the members of the Tribunate, chiefly attracted the regard and excited the jealousy of Napoleon. To enfeeble these and reinforce his own authority was accordingly the main object of this new law.

The system of district elections was made more regular and perfect by appointing Presidents of Assemblies whom the Consul should name, and by dividing each Assembly into sections under Presidents appointed by the Consul's nominees. This, however, did not seem a sufficient security against popular encroachment. All Municipal Councils were henceforth to be composed of the persons paying the greatest amount of taxes, a list of 100 of these being prepared by the Minister of Finance, out of which list the municipality must be chosen. One half went out at the end of ten years. The Consul was to name the Juge de Paix from two candidates presented by the Assembly; and he was absolutely to name all mayors and their *adjoints* (or substitutes), whose office was to last five years. The Electoral Colleges were appointed for life; the Consul named their President; and their members were to be taken from a list of the 600 persons paying the most taxes. The Consul had, moreover, the power of adding ten to the Cantonal and twenty to the Departmental Assembly, making these additions, not periodically, but as he pleased. The Electoral Assemblies were strictly prohibited from doing any other than election business, and from holding any correspondence with each other, as in the Directorial Constitution of 1795.

The Senate was also new modelled in important particulars. The number of eighty was immediately to be filled up by the Consul proposing three times for each vacancy, and his third proposal was to be binding if the two first should be rejected.

He thus at once took the power of naming sixteen Senators. He was also authorized to add from time to time distinguished persons of any age, if belonging to the Council of the Legion of Honour; and he might by his nomination of persons within the age increase the body to 120. Finally, all Senators were now allowed to hold any high offices in the State. It is needless to add, that the Senate intended to protect the Constitution was thus converted into a mere instrument in the First Consul's hands, and accordingly he increased its powers largely by this new *Sénatus-Consulte*. It could now prorogue or dissolve both the *Tribunate* and the *Legislative Body*; prolong the period of arrest by the Government beyond ten days; annul all judgments inconsistent with the public safety; suspend the functions of juries in any Department; declare any Department *hors la loi*, in other words, under military law; and make any *Sénatus-Consulte* for giving Constitutions to the Colonies, regulating matters not provided for by the Constitution at home, and resolving doubts as to the construction of the Constitution. A majority of two-thirds was required to make any such organic law.

The *Tribunate* was reduced to fifty from eighty members, one half to go out every three years. On the Senate dissolving it, it must be recomposed of entirely new members. The same provision was made as to the *Legislative Body*.

A Minister of Justice was appointed; he was to preside over the Court of Cassation; and the Consul, through the Senate, was to name the other members of the Court.

The Consul himself was now appointed for life, with the most unlimited power of naming his successor; and all treaties and alliances were to be made and also ratified by him alone.

The name of Emperor was alone now wanting to complete Napoleon's Monarchy; and in less than two years after the *Sénatus-Consulte*, he assumed that title and changed the form, in part too the substance, of the Constitution by another *Sénatus-Consulte*, made in plain breach of the former, which confined the power of making organic laws to cases that had not been provided for by the original frame of the Government. He was declared Emperor of the French, and the Imperial Crown was made hereditary in his family, to the exclusion of females. His family were raised to the rank of Princes and Princesses, and his authority was extended over their marriages,

and to making statutes for governing the Imperial family. The Princes were made Senators. The Civil List of the King, settled in 1790, was transferred to the Emperor and his family. He was also authorized to name a Regent in case of his successor's infancy or incapability. A Body of Nobles was formed, consisting of Grand Dignitaries officially, as Grand Admiral, Constable, Archchancellor, &c., all having seats in the Senate, where also the Princes sat, beside the eighty presented by the Emperor out of the Electoral Lists, and such persons as he chose to raise to that rank. The Senate could reject a law proposed by the Legislative Body, but the Emperor had not only a veto, he could adopt and pass a law rejected by the Senate. The Tribunate was divided into three sections, for Legislation, Police, and Finance, and could no longer discuss any laws in a General Assembly of its whole body. The nomination of President was vested in the Emperor on a list of three presented by the Tribunate voting secretly. The Tribunes were to continue only ten years in office, and one half were to retire every five years. Notwithstanding all these fetters imposed on the Tribunate it was still found unruly, and in 1807 a *Sénatus-Consulte*, as illegal as the two former of 1802 and 1804, finally abolished it, leaving the Emperor altogether absolute.

In April 1815, after his extraordinary return from Elba, he proclaimed a new Constitution of a limited Monarchy and much more popular form. The Legislative power was vested in two Chambers, one of Peers, being the Imperial Princes and others who were to be named by the Crown without limit of numbers and hereditary, the other a House of 629 Representatives chosen by the people, sitting for five years, but re-eligible, the elections being had according to the organization of 1802. All direct taxes were to be yearly voted; though the indirect might be granted for a longer time; and all levy of money or contracting of loans without the sanction of a law was prohibited. These propositions must likewise proceed from the Chamber of Deputies. The power of proposing laws was left to the Emperor; but either Chamber might discuss a subject not propounded by him, and address him to propose whatever it desired. The Chambers too might alter and amend as well as reject his propositions. The Ministers must sign every act of

the Government, and were made responsible. The power of impeachment was vested in the Deputies; the trial of the charge in the Peers. All ministers and other office-bearers might sit in either Chamber, if elected to the one or created Peers in the other. Both Chambers must sit in public, and all judicial proceedings must likewise be in open court. The right of printing and publishing with the author's name was declared to be absolute, all censorship abolished in such cases, and the only responsibility confined to trial by Jury after publication.

It is easy to see that this close copy of the English Constitution was the fruit of Napoleon's peculiar position, surrounded with perils so vast as to baffle even his transcendent genius. Had he given his people such a form of Government ten years before, he, or his family, might still have filled the throne of France, and a deluge of blood have been spared.

## CHAPTER XXXIII.

GOVERNMENT OF FRANCE.—RESTORATION—EXISTING  
CONSTITUTION.

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Restoration—Charte—King's Prerogative—Chamber of Peers—Chamber of Deputies—Powers and Proceedings of the Chambers—Ministers—Judicial System—Fraudulent manner of giving the Charte—Revolution of 1830—Changes in the Constitution—Compared with that of England—Evils of Peerage for life—Want of a real Aristocracy—Distribution of Property—National Guard—Resistance the foundation of the Constitution.

WHEN the arms of the Allied Powers, with the powerful aid of their best ally, the boundless and unprincipled ambition of their great enemy, had trampled over the genius and the fortune of Napoleon, the Bourbon family was restored, and a Constitution was given to France modelled upon that of England. Its provisions were contained in an instrument called the Constitutional Charter (*Charte Constitutionnelle*), which was published 4th June, 1814. It contains the description of the Government still existing.

This charter set out with declaring the rights of Frenchmen, as all equal in the sight of the law, their capacity to hold all offices civil and military, their liability to contribute to the public service in like proportion to their means, freedom from arrest and punishment except by legal process, right to print and publish their opinions only subject to the punishments denounced by the law for slander or sedition and the abuse of the press, the right to possess their property, including the National Domains, only liable to such seizure as the public necessities may require, and upon suitable compensation. The Catholic religion is declared that of the state, but all religions are equally tolerated, and the National and other Christian Priests of all sects are entitled to public support. All inquiry

as to former opinions or conduct during the revolution is expressly forbidden, and the Conscription is abolished.

In the King is vested the command and disposal of the public force, the power to make war and peace and negotiate treaties, the nomination to all places of public trust, and the making regulations for the execution of the laws. He alone propounds laws, but the Legislative Chambers may address him to propose any measure after discussing it in Secret Committee. Taxes can only be originated in the Lower House or Chamber of Deputies. If both agree the address is laid before the King, and if he rejects it the same thing cannot be asked for the remainder of the Session. The King alone can call, prorogue, and dissolve the two Chambers.

The Chamber of Peers is formed by the King's nomination, and the Peerage is hereditary.\* The Princes are Peers by right of birth, but they can only sit by virtue of the King's writ each Session. The sittings of the Peers are secret, unless for the trial of crimes against the public safety. The Peers can only be arrested or tried by order of their own Chamber.

The Deputies are chosen for five years, one fifth retiring yearly; and the payment of 1000 francs in taxes, and the age of forty, is required for them, unless fifty persons paying 1000 francs (40*l.*) cannot be found in any Department. Electors must be thirty years old and pay 300 francs (12*l.*). They vote by ballot, and they choose the Deputies by direct and immediate election.

Half the Deputies chosen must reside within the District which elects them. The President is named by the King from a list of five presented by the Chamber.† The sittings of the Deputies are public; but five members may demand a private sitting. All taxes must be ordered by a law to which the King and both Chambers have assented. All land-taxes must be yearly; others may be imposed for several years. The Chambers must be convoked by the King once a year, and if that of the Deputies be dissolved it must be re-assembled within

‡ \* This was afterwards changed, in 1830—as was the secrecy of the Chambers' sittings.

† The Chamber now chooses its President directly; the King having, as with us, a nominal right of approval or rejection.

three months. No deputy can be arrested unless taken in the actual commission of some crime, or be seized by consent of the Chamber. No address to either Chamber can be made at the bar, or otherwise than by petition. The number of the Deputies was in 1816 fixed at 250, in 1820 it was reduced to 172.

The Ministers are responsible for all acts to which they agree, or which they countersign or execute. They may have seats in either Chamber, and, though not members, they may attend to explain and defend their conduct.

The Judges are all named by the King, and are irremovable except the *Juges de Paix*. No special courts can be created for the trial of any offence. All trials must be public unless the Court shall, by a judgment, declare the publicity to be dangerous to the State or hurtful to morals. The right of pardon belongs to the King. The Codes of Napoleon are preserved as the laws of the realm. The Court of Cassation is also continued.

The Charter further guaranteed the public debt, and declared all engagements of the State to be inviolable. The titles of all the ancient as well as new nobility were preserved, and the Legion of Honour was also maintained.

Upon this Constitution various reflections suggest themselves; and first, upon its origin in 1814. The immediate or proximate cause of its adoption is studiously concealed in the very false preamble with which the King, Louis XVIII., restored to the throne by the allied arms, prefaced the Charter of June 1814. He makes no mention of the important transactions which had taken place on the 1st of April, and during the following days, when the Senate, assembling under a frank confession of the Russian Emperor, that "France could no longer be governed without a Constitution," voluntarily recalled the Bourbons, provided they would accept the Constitutional Charter which had been prepared and adopted, framed upon the principles of the Constitution of 1791, and indeed of the English Government. The Count d'Artois, on whom the Senate had conferred the title of Lieutenant-General of the realm, had engaged for his august brother that he should recognise the fundamental principles of that Constitution. On the 2nd of May the King himself published his Proclamation, in which he declares that he is restored by the love of his subjects to the throne of his ancestors; that he

approves all the principles of the Constitution submitted to him by the Senate, and prepared in some haste. He enumerates those principles, and promises to have a Charter more deliberately framed upon them as its foundation. But on the 4th of June he proceeds to promulgate the promised Charter; and he now omits all mention of the share in his restoration which he had a month before ascribed with gratitude to the French people; he only acknowledges Divine Providence as the cause of his recall; he affirms that all power and authority in France has ever resided in the Sovereign, but yet that his predecessors had from time to time moderated or modified (*modifié*) its exercise according to circumstances. He cites as precedents for his exercising the same bounty, the examples of Louis le Gros giving Charters to the towns, St. Louis and Philip le Bel having conferred and extended municipal rights, Louis XI. and others having improved the judicial system, and Louis XIV. having regulated all branches of the administration by ordinances, "the wisdom of which had never been surpassed." He then proceeds to state that the spirit of the age and the great changes which half a century had produced (thus carefully going back to the reign of Louis XV. instead of Louis XVI.) rendered it natural for his people to desire a Constitution, which he had resolved to grant them, after "the example of the Kings, his predecessors;" and after mentioning that the most enlightened men had, with his Commissioners, worked at the preparation of a Charter, he declares the grounds on which he grants it. "It is in the French character," he says, "and in the venerable monuments of past ages, that he has sought the principles of his Charter." The re-establishment of the Peerage, "a truly national institution," he has found of course in these monuments of the past; but he has also, he adds, substituted the Chamber of Deputies "for the ancient assemblies of the Champs de Mars and de Mai," and for those Chambers of the Tiers Etat which "have so often proved their fidelity and their respect for the Royal authority." But his Majesty is pleased to preserve a profound silence as to the States-General, and also as to the Constitutions of 1791 and 1795, from which the Chamber of Deputies is plainly taken. As little does he make any allusion to the Charter drawn by the Senate a few weeks before, and of which he had distinctly admitted all the



principles, though it certainly came as near the new plan as the monuments of antiquity were remote from it. After this false and hypocritical preamble, he proceeds to give the Charter in these words of grant :—" We have voluntarily, by the free exercise of our Royal authority, granted, and do hereby grant and make concession and free gift (*concession et octroi*) to our subjects, as well for ourselves as for our successors for ever, of the following Constitutional Charter."

This treacherous and foolish proceeding, as well as the conduct of the restored Government towards the illustrious men of the Revolution and the Empire, prevented the restored family from obtaining any place in the affections of the people, or commanding their confidence ; and enabled Napoleon, as soon as the calamities which he had brought upon the country were somewhat forgotten, to march through France with a handful of men and replace himself on the throne. New confederacies of the Continental Powers, and a prodigious victory won under the pressure of the most disadvantageous circumstances\* by the most illustrious Captain, and one of the most distinguished Statesmen, of the age, at once overthrew Napoleon, and again restored the Bourbon Family. Their fresh experience had not added to their stock of either honesty or wisdom ; and after a series of outrages upon the feelings of the country, the last of their legitimate Princes put himself in the hands of bigoted priests and weak lay fanatics, possessing neither courage nor capacity, but supplying the place of the one by blind rashness, of the other by monkish zeal, and was met by the resistance of the gallant people whom he and his infatuated advisers thought they might safely oppress. A new Revolution took place, and the people having expelled the reigning branch of the Royal Family, called to the Throne the great Prince to whose firmness and genius for affairs the tranquillity of France and the peace of Europe owe a debt of gratitude that can never be repaid. The Charter, violated by Charles, was restored to its full vigour ; some changes were made in the Constitution, of which the chief are, that the Peerage is no longer hereditary, that the sittings of both Chambers are alike public, and that some

\* His famous army of the Peninsula, that army of which he so feelingly said in his evidence before the Commission upon Military Punishments that he used to think he could with it have done anything, was no longer under their great leader, but serving in North America.

further restraints and regulations have been imposed in consequence of the plots and attempts at assassinating the Sovereign.\* But France now possesses a free Constitution, upon which a few further remarks occur.

1. In outward form, the principal difference between the French and English Constitutions is the Peerage in the former being for life only. Whatever reasons may be urged for adopting this plan after the Revolution of 1830, it must be regarded with disapprobation and regret. The dependence of the Upper Chamber upon the Crown is thus rendered complete. All who would transmit their honours to their family (and who is without this desire?) must adapt their public conduct to the wishes of the Court, seeking the favour not so much of this or that administration, as of the Sovereign and his family. The Chamber which should, above all, act as a balance and regulator of the machine's movement, becomes incapable of performing this office; it becomes the ally of one of the other branches of the system, and can no longer act as the impartial arbiter between the two. Besides, the necessary deficiency in personal weight of the Aristocracy in France, from the poverty of its members, makes it the more necessary to uphold the importance of their body by all fair means. Even the far more powerful body of the English Lords would suffer materially were their honours and privileges personal and not hereditary.

2. But the great and leading distinction between the two systems of England and France is to be found more in the state of society, and especially the distribution of property, than in the letter of the constitutional laws. The English Peers are the great territorial potentates, the landed grandees of the country, joined with the heads of the law and the ornaments of the military and naval professions. The Natural unites with the Political Aristocracy to endow and illustrate our Upper House. All its members are either distinguished for ample wealth, or for wealth united with celebrity and personal acquirements; and many of

\* Resembling our Revolution in so many other respects, in this unhappily it exceeds the same famous precedent, that more assassination-plots were for some years hatched in France against Louis Philippe than there had been against William III.; and rigorous measures of a temporary nature became necessary in France, in like manner as with us the Parliament had been for a similar reason, though of less urgency, compelled to suspend the Habeas Corpus Act more than once soon after the Revolution.

them count a long line of illustrious ancestors, from whom they draw their honours with their estates, whose places they fill, whose names they bear. In France it is far otherwise ; and the great influence of the Aristocracy, with us so powerful, is there almost altogether wanting. The Chamber of Peers is thus a place of able and enlightened debate, but it is little more. It has little weight with the country beyond what the value of its discussions may give it ; and the importance of its assent or dissent on any occasion is grievously impaired by the arrangement last mentioned, which so intimately connects it with the Crown.

3. The want of adequate fortune to support the dignity and maintain the influence of the Peerage is partly the result of the Revolution, and of the destruction which it wrought of noble families, partly the fruit of that law to which the great majority of the French people are so much attached—the law securing the equal distribution of landed property. As no person, having children, can without the Royal assent create an entail (*majorat*), and as this is very rarely granted, an equal division of his estates takes place on the decease of every landowner, and the distribution of the whole lands in the country among a prodigious and daily increasing number of proprietors is the unavoidable consequence. Not only does this prevent the greatest produce being obtained from the land by the most improved system of husbandry, but it creates a vast mass of small landholders, and it prevents the formation of a territorial Aristocracy. The result of this system is, that there can hardly be said to exist any Aristocracy in France. There are two Chambers, one dependent upon the people, the other allied to the Sovereign ; but there are, properly speaking, only two substantive powers in the State, the Crown and the Commonalty. A great shield is thus removed from the Prince, useful for his protection, and a check is removed from the people requisite for their control. The chances of a collision between the two are greatly multiplied, and the risk of that collision oversetting the political machine is manifestly increased.

4. The National Guard is a great security both to the Throne and to popular rights. All citizens within the age must serve in it, without any distinction of rank or any power of appearing by substitute. The great force thus placed at the Sovereign's disposal, for the purposes of police and the weakening of the ranks of the disaffected, contributes prodigiously to the public security ;

while the vast numbers of armed citizens form an impregnable bulwark to the liberties of the subject. The letting this great body, however, choose its own officers appears to be an anomaly in the system, and is certainly inconsistent with the principle which recognizes the King as absolute disposer and commander of the public force. It is a practice, nevertheless, to which the attachment of the French people appears universal.

5. But it must be kept in mind that one of the most valuable peculiarities of our mixed Government is fully possessed by that of France. The Constitution, like our own, is the undoubted result of Resistance. The Charter of 1814 was, like the Restoration, in part the work of foreign armies, and it only partially partook of the popular principle; it was but in part the creature of the popular will. Men might doubt whether it was not in reality given by the grace and favour of the Prince, as it was in name proclaimed to be his free grant, without any claim of right being acknowledged in the people. About the origin of the settlement of 1830 there can be no doubt at all; it was altogether the work of the people's own hands; they had risen on the Royal Family, and expelled its reigning branch; they had, like ourselves, freely chosen another branch to succeed. They therefore from thenceforth held their Constitution by the title by which we hold ours—the resistance, in fact, made by those who enjoy it of right, and the exercise of the people's prerogative to choose their rulers when those who are clothed with supreme power have abused their sacred trust.

## CHAPTER XXXIV.

## CONSTITUTION OF HOLLAND AND BELGIUM.

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**Early History**—Government always limited—Cause of this—Burgundian Princes—Progress of the Principality—Charles V.—Constitution before and after his reign—Recognised principles—Annexation to the Empire—Philip II.—Revolt and establishment of the United Provinces—Glory of the Netherlands—Orange family—Stadtholder—Democratic spirit—Attempted revolution—Prussian interference—Dutch shamefully subdued—Executive power; Stadtholder—Deputies—States-General; their constitution and proceedings—Council of State—Grand Pensionary—Provincial Constitutions—Details—Principle of Delegation pervaded the system—Its evils—French Conquest—Federal Government—Constitution of 1798—Constitution of 1801—Regency of Twelve—Legislative Body—Councils of Administration—Judicial System—Change in 1805; Grand Pensionary—Kingdom instead—Changes—Union with France—Existing Constitution of 1814—Revolution of 1830—Differences from English Constitution—Succession to the Crown—Restrictions in Royal Family—Regency—Additional Prerogative as to Colonies; Judges; Dispensing Power—Restrictions as to Pardons; Territorial Cession; Council—Chambers—Election of Deputies—Powers and Proceedings—Provincial States—Judicial System—Alterations in the Constitution—Vicious Constitution of the Upper Chamber.

THE whole of the territory denominated the Low Countries, that vast triangular tract which lies between Germany and France, was conquered by Charlemagne, and distributed under a Duke of Friesland among a number of Counts, whose office was first that of Military Governor, and held during pleasure, and who afterwards, as in all the other Feudal Kingdoms, obtained a proprietary possession of their Principalities. By degrees the Dukes of Friesland disappeared, and there were only left the Counts, whose numbers were gradually reduced by alliances and intermarriages; so that at the end of the eighth century there appears to have remained only one; but the title of Earl of Holland is first met with in the eleventh century, about the year 1064, in the time of the Emperor Henry IV. The Count's power was not extensive; the people were more independent than in any other portion of the Empire; and in very early times the towns sent Deputies to meet the Nobles and Clergy in Parliament, or States-General. There is an example in 1203 of a Countess of Friesland being deposed for marrying without the consent of the States; she was the twelfth sovereign in succession who had governed the country. It was customary for those

Princes on their accession to grant Charters, conferring new privileges or other favours on their towns, as if there had been an election, or at least a popular confirmation of their title. The Barons, however, had no superiority over their other vassals, and the land appears in a great part of the country to have been allodial, like that of Norway and our own Orkney Islands. The important peculiarities in the situation of the Netherlands may be traced to the circumstance of the Barbarians, when they overran the Roman Empire, having gone almost all onward to the more fertile plains and milder climate of the south, so that comparatively few remained in the northern districts.

The whole of this territory came gradually under the dominion of the Dukes of Burgundy, a principality originally extending over Switzerland, Savoy, part of Provence and of Dauphiny, but afterwards reduced within narrower limits. Early in the fifteenth century, however, the Dukes obtained Brabant. On the death of the Countess Jaqueline in 1436, Philip the Fair obtained Namur, Holland, Friesland, and Zealand; and in 1451, Luxembourg. He was a Prince of rare merit and virtue; and the value set in all after times on the Order of the Golden Fleece founded by him, seems a testimony to the respect in which his memory was held. His son, Charles the Rash, added the Brisgau and Alsace, but lost Switzerland by the resistance of the people and the famous battle of Morat. His daughter married Maximilian of Austria, who, having by marriage acquired Arragon, Castile, and Leon, the kingdoms of Joanna, mother of Charles V., left them, with the seventeen provinces of the Low Countries, to that celebrated Monarch. He succeeded in uniting them into one principality, and declaring it hereditary after a long struggle with the States of the different provinces; nor was it till 1549, at the latter part of his reign, that he finally prevailed over the whole seventeen. His large possessions in Spain, Italy, and the Indies, enabled him to render himself thus the master of three dominions formerly independent, according to the principles so often explained in treating of the Imperfect or Improper Federal Union (Part I. Chap. xv). His sway over this part of his dominions was, however, far from harsh. A native of the Low Countries, where he received his early education, and attached to this his hereditary principality, he ruled them with a far more kindly and paternal hand than the rest of his dominions.

The Sovereign united in his own person the character and the

titles of the various sovereignties which were thus blended into one. He was Count of Holland, Marquess of Antwerp, Duke of Brabant, Lord of Utrecht. Each of the Seventeen Principalities had States of its own, composed variously; for in one the Nobles preponderated, in another the Town Deputies; in one the Clergy had no Deputies, in some they had so few as to possess little or no weight. But the general frame of Government was the same—a Sovereign with a Representative Assembly, which he convoked when he pleased, and which was rather his Council to aid him with information and advice, than a rival body to control his operations of peace or war.

But this was rather the altered and mutilated Constitution which Charles succeeded in imposing upon the Netherlands, than their ancient and limited form of government; nor could it ever be regarded by them as other than a new and tyrannical system of policy. The States had always before his time claimed and enjoyed extensive and important privileges; and we need only look at their conduct in the preceding century to be convinced that a free government was established among them before the reign of the Emperor Charles. There had been frequent instances of resistance to the Prince. Thus Maximilian, guardian of the infant Philip, having invaded the privileges of the towns, the States rose against him and made him prisoner, “for the security, as they declared, of themselves, and in the name of all the States of Flanders.” They acted in this with all possible courtesy, using the most respectful and even humble language, and proceeding with their heads uncovered; but they put some of his ministers to death, others they banished; and they assembled a general meeting of their body at Ghent, where forty-seven articles of impeachment were brought forward against him. One of the charges was his making war against France without the consent of the States, who had equally with him sworn to maintain the peace; another was his having levied taxes of his own authority, which the Prince himself could not impose, much less the guardian; a third was for not suffering the States to assemble when they thought fit. Maximilian was only set at liberty on his giving an engagement to redress all their grievances.

In fact the recognized principles of the Netherland Constitution before Charles V., perhaps we might say before Philip II., were these: that the States had the power of assembling as they pleased; that none but natives could hold any public office; that

no war either offensive or defensive could be proclaimed without the consent of the States; that the King could not marry without this consent; finally, that no money could be levied which they had not granted. The grant of supplies was on the Count's application by petition to the State called *Bedens* (begging). These were the principles of this free government; but they were often violated by the Burgundian Sovereigns. In the reign of feeble Princes the states and the towns extended their privileges and immunities; in more vigorous reigns these were abridged, or more frequently, without formal abrogation, they were disregarded and violated.

In 1548 Charles, with consent of the States, and by a treaty with the Empire, formed the whole provinces into a circle called that of Burgundy; having Deputies to represent it in the Diet, enjoying the same privileges with the Austrian circle; and with an exemption from all taxes except to furnish as many men and as much money as two electorates, and as many as three in wars against the Turks.

In the reign of Philip II., Charles's successor, the tyranny, civil and religious, of that bigoted Prince and his cruel Vice-Roy the Duke of Alva, above all their inexorable determination to promote the glory of God by means of the Holy Inquisition, occasioned a revolt, which ended in the severance of the seven Northern Provinces, and their establishing a Federal Republic. This great event, one of the most important in the history of mankind, took place in the year 1579, after a long, painful, and glorious struggle, attended for many years with various fortune, and illustrated by the display of extraordinary capacity and courage in the Dutch captains, as well as indomitable constancy and perseverance in the people.

The great struggle was made under the guidance of William I. Prince of Orange, a small principality in Provence, obtained by the Nassau family through marriage and treaty with France about the beginning of the sixteenth century. He had been chosen Stadtholder, or Governor, by the States of some Provinces, on their resistance to Alva, Philip's Lieutenant; and, as they intended only to resist the Vice-Roy and not the Sovereign, the title given to him was "Stadtholder of the King." For many generations the office, though elective, descended in the Nassau or Orange family; and it only became hereditary in the year 1747.



With the office was joined the command of all the forces; the Stadtholder was General and High Admiral. In 1785, however, a strong republican spirit, first drawn forth under Maurice's reign in the sixteenth century, and which had never been extinguished, burst out again and pervaded the Seven Provinces, and this was greatly aided by the step of arming the burghers; which had been adopted towards the end of the American war, when the United Provinces joined France against England. The people, who had never dreamt of taking any share in the Government, resigning almost everywhere the whole administration into the hands of aristocratic and self-elected municipalities, now awoke to a sense of their own importance, and in many of the towns democratic constitutions were formed. Of these Utrecht was the leader, and its example was followed by many others; while in many the aristocratic authority and scheme kept the ascendant. The Province of Holland was, by a majority of its functionaries and inhabitants, ranged on the same side. In 1786 matters were pushed to extremities; the military command was taken from the Stadtholder, and his body-guard disbanded. The States of Holland even proceeded to depose him in September of that year, and arrested the Princess for some days. This brought on a crisis; and though the French Court sided with the republican party, the Princess, a daughter of Frederic II., and a woman of talent and courage, appealed to her brother now on the throne of Prussia for assistance, with the help and countenance of England. Of the Seven Provinces the Prince had the support of four, a bare majority; and the other three included Holland, which pays above half the whole taxes of the Federacy; the four which joined the Stadtholder paying only one-third among them. A Prussian force of 25,000 men, under the Duke of Brunswick, soon terminated this struggle. The terms proposed by Amsterdam were rejected; the army entered the capital; the rest of the province submitted shamefully after threatening resistance, and vapouring about the removal of the Commonwealth to India, and the renewal of the scenes in which, first against Philip, afterwards, in the last century, against Louis XIV., the Dutch (but the Dutch of other days) had gained such imperishable renown, exhibiting to the admiration of mankind a glorious proof that commercial greatness does not always undermine the patriotism of a nation.

By the Dutch Constitution the Stadtholder had both the whole military power in his hands and possessed an overwhelming influence over the deliberations of the States; but in outward appearance they and not he ruled. Though he had the right to propose anything to them, he had not even a chair allotted different from those in which the Deputies sate. As soon as he had stated his proposition he was obliged to retire while the States deliberated upon it. He presided over most of the civil as well as all the military departments, named many of the municipal officers in the towns, and derived great influence from being the Governor of both the East India and West India Companies.

The Deputies were chosen for life, except those for Zealand, who were appointed some for three, some for six years, and all were removable at any time when differing with their constituents. The whole assembly consisted of about fifty, of whom Holland sent six or seven, Guelderland nineteen, Zealand four, Friesland five, Oberyssel five, Groningen six. But whatever number of Deputies any province sent, it had only one vote: there were but seven votes in the whole body. Upon all ordinary questions a bare majority of the seven votes decided; but on all matters touching the "Essence of the Federacy," as it was termed,—war, alliances, taxation, the rights of each state,—the whole must be unanimous. In short the Union was a conference of independent states acting together under a Treaty, and any innovation upon the terms of that treaty, or any important matter affecting their general interests, must be assented to by each and by all. The Provinces presided week and week about, the first deputy of each taking the chair in his turn. The Council of State was composed of twelve Deputies; Holland sending three, the others, some one and some two each. Its office was to execute the orders of the States-General, and the Stadtholder presided over it. The Grand Pensionary was chosen by the States of Holland and Friesland for five years; but he was re-eligible, and he generally kept his office for life. He was the Counsellor of the States, in matters of law especially, and carried on the negotiations with foreign powers. He also kept the records of the Confederacy. The different states contributed to the Federal charges in fixed proportions: Holland 58 per cent., Zealand 9, Utrecht 5, Friesland 11, Oberyssel 3,

Groningen 5, and Guelderland 5. The population of Holland is about two-fifths of the whole, or one million in two and a half millions.

There were material differences in the Provincial Constitutions, but a general resemblance pervaded them all in the more important points. As the States-General represented by deputation the different Provinces, so the Provincial States represented the towns of each Province. In all these there was a representative body; and in each the government of the towns whereof the State consisted belonged to the Nobles and the Magistrates of those towns. The inhabitants of each town were divided into guilds of arts and trades, with deacons (*Dekken*) at the head of each; in general each guild inhabited its own quarter of the town, with two *Wykins* to keep the arms in order; and over all the guilds of every town was a *Hoofdman*, or Captain of the Burgher guard. There were frequent musters and drills. The domain of each town extended some distance into the adjoining country, the rest of which was subject to the Nobles who possessed the low jurisdiction, and sometimes the high also (Part I. Chap. XIII.), and were exempt from paying direct taxes, but bound to serve in person, or by substitute. As originally the provinces were under the Counts, the chief Nobles formed a Council to assist the Count, and to examine judicial sentences, except in the towns where the Charter excluded this appeal. In Holland there were two bodies, the Nobles, or Equestrian order, and the order of the Towns, or Burghers. Only the eighteen great towns sent deputies to this assembly, as Amsterdam, Dordrecht, Haarlem, Delft, Leyden, and Gouda; before 1545 the smaller towns were also summoned. Whatever number of Deputies any town sent, the whole had but one vote. The Chamber of Nobles formed one body; the number of Deputies chosen to it varied, but generally it was ten, and the whole order had but one vote. The States were always convened on a specific occasion for a specified purpose. If anything new was tabled there must be an adjournment, in order to obtain fresh instructions; so must there if any town was not represented, or the Nobles did not appear by deputy.

The principal officers of state were the Registers and the Pensionary, who prepared the measures to be discussed, and

kept the records. He was allowed to debate, and had great influence, but no vote. The nobles always chose the same Pensionary with the towns.

In some Provinces there were more bodies of States than one. Thus Friesland had three divisions, each having States. These divisions were distributed into Bailliages, twenty-eight in number, and each sent two deputies to the States, and each town two also. The Deputies of the Bailliages were chiefly Nobles.

The Count had a Council in each Province, called the *broedschappe*, or council of wise men, which used in former times to deliberate on great affairs, but latterly only chose the inferior officers of the County. In some districts the choice of Councillors was vested in the inhabitants having a certain property, called the *Rykdom*, or wealth; thus in Hoorn, the most popularly constituted, every person having a fortune of 250 nobles voted. The election was in general of a complicated form, into which the Ballot entered. In some places the Council was a close body. Dordrecht was the most aristocratic, as Hoorn was the most popular government. There the Council was composed of forty persons, who held their places for life, and filled up the vacancies as they occurred in their own body. The Senate consisted of a Burgo-Master, nine *Echevins* (Sheriffs), and five *Rads* (Councillors).

The leading feature of the old Dutch Constitution was Delegation. Each Deputy to the States-General, or rather each Commission, each detachment of deputies from any of the Seven Provinces, was not the representative sent to consult for the good of the whole Union, but the Delegate instructed to treat for the Province which sent the mission, the agent to give, according to the instructions of the principal, that principal's assent or dissent upon each question propounded in the Assembly of the States. In the Provincial States it was exactly the same rule; each town was a commonwealth within itself, so far independent that it sent a person or persons to give its vote, not to confer with the Deputies of the other towns upon the general interests of the Province. Hence no councils upon any affair of general importance could be adopted in the States-General while one of the Provinces withheld its assent; and no measure affecting the Province could be adopted in the Provincial Estates if each

town did not concur. The *liberum veto* prevailed in the United Provinces as much as in the Polish Diet; only that it was worse in the Diet, because those who exercised it were not deputies, but persons sitting in their own right, and each individual's assent became, therefore, necessary. But the principle was equally bad; it was mere delegation, not representation.

In 1795 the intrigues and the arms of France overthrew the Stadtholder, and established the Batavian Republic. Early in 1798, after many attempts to place the government upon the model of the French, the executive power was vested in a Directory of five, who, with a legislative body of two Chambers, governed the republic—all Federal Government being entirely destroyed. It was the obstinacy with which the people clung to the Federal scheme that rendered the establishment of this new constitution so difficult. That scheme is well adapted to gain the affections of the unreflecting multitude, and also of their selfish leaders; for it secures to each place a substantive weight and influence, and to each party chief a personal authority in the general administration of affairs. It may, however, safely be pronounced to be a system of policy eminently inconsistent with the best interests of the community, and indeed wholly repugnant to the very first principles of the social union.

It is not worth while to detail the arrangements of the Constitution of 1798, because it only lasted until Napoleon's power was sufficiently established by the victories at Marengo and Hohenlinden, and the peace with Germany that followed those marvellous events. In 1801 he succeeded in establishing a new form of Government, that is, a form new in its details, but founded on the same principles as that of 1798. It was not, however, easily or immediately that this new Constitution was imposed. The Legislative Body, by a narrow majority, rejected it when proposed by the Executive Directory; but an appeal to the people at large having been at the same time made, it was found that 416,419 votes were registered in favour of the proposition, and only 52,219 against it. Hereupon the Directory shut up the two Chambers, and forthwith proclaimed the Constitution.

The executive power was vested in a Regency of twelve; the first choice of whom was made by the old Directory naming

seven, and these seven naming five. Each year one of the twelve retired, and his place was supplied by the Departments or Provinces in rotation naming four persons, from whom the Regents chose two, and of these the Legislative Body chose one. The Regents had the disposal of the forces, naval and military, and the choice of their commanders, but none of themselves could be commander-in-chief. They had the conduct of all negotiations, and the appointment of ambassadors ; but war could only be declared with consent of the Legislative Body. They had the appointment of the Ministers, but the other functionaries were named by them from lists of candidates provided by the Departments, the Regents having, however, the power of requiring new lists if they rejected the whole names presented. The Departments of Administration appointed the subordinate officers. The Regents alone could propose laws to the Legislative Body. To be a Regent a person must be thirty-five years of age, and the salary of each was 1000*l.* a-year. They presided each three months in rotation.

The Legislative Body was composed of thirty-five members, the first thirty-five being named by the Government, and a third went out every year. The qualification was being thirty years old, being a natural born subject, and having lived six years in Holland. The elections were made by Primary Assemblies, the active citizens having votes, that is, such as had attained the age of twenty-one, resided one year if a native, six if a foreigner, was able to read and write, and had a certain moderate amount of property. The Legislature met of itself thrice a-year, and had extraordinary meetings when convoked by the Regents. All taxes must have the direct sanction of the Legislature. But it was a singular regulation of this Constitution, borrowed from that of France, that the discussion of all the legislative measures presented to it was carried on, not by the Legislative Body at large, but by a Committee of twelve chosen by them each Session. The whole body then voted upon the Committee's Report without debate.

The administration was distributed among a number of Councils, under the Regents. Thus there was a Council of Commerce ; one of nine members for the East Indian, and one of five for the West Indian possessions of the Republic ; a Council of Marine, of seven members. These four Councils were ap-

pointed by the Regents. The Chamber of Accounts consisted of nine members, and these were appointed by the Legislative Body.

The Supreme Tribunal for the whole Republic was composed of nine members (the favourite Dutch number), chosen by five of the Legislative Body and five of the Regents. The members of this Higher Court held their places for life. The original jurisdiction of the Court was in all proceedings against members of the Legislature or the Government, and in all causes in which the State was a party. Its appellate jurisdiction extended over all the inferior Tribunals, whose decisions it could set aside for error in law, as a Court of Cassation ; but it had also a general appellate jurisdiction over the Courts of Justice everywhere. It could order proceedings by the Public Prosecutor, whenever it deemed the State to have been injured. Though this Court was considered supreme, yet a kind of appeal, or something between an appeal and a re-hearing, could be had after any judgment pronounced by it. In this case Adjuncts were chosen from the Departmental Courts, and sat with it.

The General Public Prosecutor, and the Public Prosecutors before the Departmental Courts, were named by the Regents from triple lists sent by the Supreme Court and the Departmental Courts respectively. Beside these functionaries there were joined to the Supreme Court three Syndics, Doctors of Law named by the Legislative Body from a triple list presented by the Supreme Court itself. The office of the Syndicate was to watch over the Constitution established by law, to receive complaints concerning any breach of it, and to put the charge in a course of investigation.

In 1805 Napoleon caused a great modification to be made of this Constitution, though its fundamental provisions were retained. The Regency was abolished, and the executive power placed in the hands of a Grand Pensionary, elected for five years by the Legislative Body, and endowed with the power of naming the Council of State, and with the patronage of all the public functionaries, except those holding judicial offices, but having no legislative or judicial power whatever himself. The Legislature was reduced to nineteen members, chosen by the eight Provinces or Departments, Holland naming seven, Utrecht and Zeeland one each, and the others two each ; the Adminis-

stration of each Province returned four names for each vacancy, which the Pensionary reduced to two, and of these the Administration chose one finally as the Deputy.

This Constitution was plainly intended only as a step towards creating Holland into a kingdom, which was accordingly done the following year; and the only change beside substituting an Hereditary King for an elective Great Pensionary, was the increasing the number of the Legislative Body to thirty-eight, of whom Holland chose seventeen, and the other provinces some two, some four, and some five. They were chosen for five years, and had a salary of 300*l.* a-year each.

In 1810 Louis Napoleon abdicated the Crown, and the Batavian Kingdom was united with the French Empire. In 1814 it was again severed, and the Constitution now in force was established. The whole Low Countries, as well the Seven United Provinces as the Austrian Netherlands, were formed into one Monarchy, called the Kingdom of the Netherlands, and at the head of this new state was placed the family of Orange. The Revolution of 1830 at Brussels, which apparently was caused by the contagion of the French Revolution in that year, separated the Dutch Provinces or Departments from the rest, and thus formed two Kingdoms, one of which remains in the Orange family, the other was conferred in 1831 upon Prince Leopold. The Constitution of each is the same separately as was that of the whole before this change, except that of course, the Legislative Body being divided into two, the numbers in each kingdom are diminished. We have only then to examine what was the Constitution established over the whole in 1815, and this task is easy; for it is substantially the same with our own. We shall, therefore, only have occasion to note those particulars in which it differs.

There is some difference in the course of the descent of the Crown and the provisions for the case of royal incapacity.

1. It is not, as in France, to the exclusion of females, nor, as in England, giving them the same succession after males as in real estate, only excluding coparcenary; but on failure of male issue of the person last seized, his brothers succeed to the exclusion of his issue female, and each brother becomes a stirps; but in case of the brothers leaving only issue female, it does not



seem to be provided in what manner the succession shall go, whether to the daughter of the last seized or to the daughters passed over of the person whose male issue first failed.

2. The succession is limited to other families named in the event of total failure, families collaterally connected with the House of Orange. But on the failure of descendants in those families, the Legislature is to assemble as States-General, the two Chambers meeting and acting as one, and in this case the Lower House (or Second Chamber, as it is termed) must have double its usual number of members. The King is authorized to present a new law of succession to this assembly. If he dies without making such a proposition, the same body is to provide for the succession.

3. The Sovereign is prohibited from holding any foreign Crown whatever.

4. A Queen Regnant cannot marry without consent of the Legislature; she is held to abdicate the Crown by so doing; and if she has married before her accession without this consent, she loses her right of inheritance.

5. The income of the Royal Family is regulated by law; the King has 240,000*l.*; the Queen Dowager 15,000*l.*; the Hereditary Prince 10,000*l.*, and 20,000*l.* if married.

6. The legal age is eighteen for the Sovereign, and the guardianship or regency is given previously to the emergency happening, by the King with consent of the States, meeting in one chamber, as provided in case of the succession failing; or if it has not so been settled, then by the States themselves. But, if the next heir to the Crown is eighteen years old, he alone has the right to the Regency. During the existence of the vacancy the Council of State possesses the executive power, and it assembles the States to provide for the emergency.

It must be admitted that this Constitution provides far more wisely and safely for the defects in the Royal authority than ours does. A general prospective law is always better than a measure adopted under the pressure of the emergency, and this is especially true of a measure such as that of naming a Regent. The Constitution of England, in fact, admits all the mischiefs of an elective Monarchy when there arises any incapacity in the Sovereign.

The prerogative is in some particulars more extensive than with us.

1. All colonies and foreign possessions are under the exclusive government of the Sovereign. There is no distinction made between those which are conquered and those already established under the national authority. The legislative power in all as well as the executive is in the Crown.

2. The King appoints the salary and emoluments of all public functionaries, even of the judges; but he cannot alter the salary of the judges during their lives.

3. In the vacation of the Legislature the King can, on the advice of the Council and after consulting the Supreme Court, give such dispensations from the law to individuals as the emergency of the case may require; but he must immediately on their meeting lay an account of such proceedings before the Chambers.

On the other hand, the prerogative has three limits unknown in our system.

1. Pardons can only be granted after consulting the Supreme Court of Justice.

2. All treaties for any cession or exchange of territory must be ratified by the Legislature before they can be valid. It may be observed, that such cession or exchange in England, if made of European territory, would probably not be held valid until confirmed by Parliament: but the case has never arisen in modern times, and since the constitution assumed a regular form.

3. The number of the Council of State is fixed; it cannot exceed twenty-four, exclusive of the Princes of the Blood; of whom the Hereditary Prince is the Counsellor by right whenever he comes of age. This restriction, however, of numbers applies to the paid Counsellors only. The King can name as many extraordinary Counsellors as he pleases; so that the difference between the two systems in this particular is rather nominal than real.

The Legislative Body consists of two Chambers, one of 110 deputies, the other of 40 at least, but which may be augmented by the Crown. The Deputies are elected by the States of the Provinces, which before the separation in 1830 were

eighteen in number. Of these, Holland returned twenty-two, the two Brabants seven and eight respectively, and the two Flanders ten and eight, Hainault eight, and the other States some four, some five, except that Zealand returned three, and Dreuthe only one. This is called the Second Chamber, the other is called the First. The second is renewed by a third yearly going out; but they are eligible again. All military officers below the rank of major are ineligible absolutely. The President is named each session by the King from three presented by the Chamber itself. The members receive at the rate of 250*l.* a-year, in monthly instalments, but only during the session; their travelling expenses are also paid. The age required is thirty years.

The members of the First Chamber are named by the King, and for life only; their age must be forty years at least; they have a yearly salary of 300*l.*; and the King names their President every session.

In both Chambers the Ministers have seats, but no votes, unless they are otherwise members. The Chambers must both meet once a-year and sit thirty days before the King can prorogue or dissolve them. Extraordinary sessions may be called by him at his pleasure. The ordinary sessions before the separation were held alternately at the Hague and at Brussels. The vote is in both by ballot only when they have to make any election. The quorum of each is the majority of the members. Propositions of legislation come from the King to the Second Chamber; but that Chamber can address the King if the First concurs, requesting him to make any proposition, the First Chamber having no power of originating this proceeding. On any proposition coming from the King, both Chambers must consent in order to make it a law, and the King's final consent is also required, although he has originated the proposition.

The Provincial States are composed of three orders, Nobles, or Equestrian order, towns, and country districts. The number of the Members and of the Electors are fixed by the Crown on the report of a Commission. The Chamber of Nobles is composed of members named by the King. The right of voting in towns depends upon the Constitution of each. The States in each Province meet once a-year at least, and extra-

ordinary meetings are called by the King. They choose the Members of the Second Chamber of the States-General. These Provincial States are elected by the municipal bodies which are established both in towns and country districts, and which are chosen by popular suffrage in assemblies that meet periodically. Also the local administration is under the Provincial States, but no local tax can be imposed without the Royal Assent.

The Supreme or High Court of Justice is composed of members named by the King from a triple list presented for each vacancy by the Second Chamber; the King names a Member to be President; he also names the Public Prosecutor. All impeachments, all national causes, all causes in which the King or the Royal family are parties, must come in the first instance before the Supreme Court. It has also an appellate jurisdiction over all the inferior tribunals. These are filled by the King's nomination on a triple list presented by the Provincial States. He likewise names the President and the Public Prosecutor in each. All places of Judges and Prosecutors are for life.

All changes in the Constitution are first propounded to the Provincial States, who add to the Second Chamber of the States-General a number equal to the ordinary number of Members. Two-thirds of the whole form a quorum, and three-fourths of those present must concur to adopt the proposed alteration. No alteration can be made, nor can the order of succession be changed, during a Regency.

The only material changes that have been made in this Constitution since the separation of 1830 have been the necessary one of the numbers which the two Chambers consist of, and which are in the Netherlands 51 for the First, all but nine being nobles; 102 for the Second Chamber;\* in Holland, from 40 to 60 for the First and 58 for the Second; and the taking from the Crown all power of dispensing with or suspending the laws. The Crown has not the power of dissolving the Chambers, but can call an extraordinary Session. It can always adjourn or prorogue at pleasure after the first twenty days. All peerages are for life. The Courts of Justice are bound to disregard any Royal Ordinance made for the execution of the law, and which is contrary to the general law. The responsibility of the Ministers has also been fully established in both countries; and

\* The number is one for every 40,000 of the population.

every act of the King must be countersigned by some responsible person.

The particulars in which these Constitutions differ from our own are not many, and, except that of the Peerage being for life, they are not very material. Some of them, as those respecting the Regency, are undeniable, and considerable improvements. The Constitution of the First or Upper Chamber is in every respect vicious ; and in both countries, there being the materials of an Aristocracy more ample than in France, this is a serious defect needlessly introduced. But the form of Government is plainly mixed ; it is strictly that of a limited Monarchy. Neither the Monarchical nor the Democratic principle predominates ; and it is only less perfect than our own in consequence of less than its just share being allotted to the Aristocratic interest.

## CHAPTER XXXV.

## GOVERNMENT OF SWITZERLAND.

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Connexion—Early Swiss History—Independence established—Morgarten—Confederacy formed by the three Forest Cantons or Wald-Stetten—Junction of others: Lucerne; Zurich; Zug; Glaris; Bern—Their several and federal Constitutions—Ammans; Councils; Avoyers—Soleure and Friburg joined; Basil; Schaffhausen; Appenzell—The Constitutions of these five new Cantons—Three bases of the Federal Union—Greater Privileges of the eight old Cantons—General Diet; its Proceedings—Allied Cantons—Confederates; Associates; subject Bailliages—Grison Federacy; its constitution; its corruption—Revolution of 1798 effected by France—New Republican Government—Conferences of Napoleon—Constitution of 1803; Manner of its Formation—Genius of Napoleon—Provisions of his Constitution—Contingents of Men and Money of the Cantons—Their great inequality—Population—Perfect Federal Union; its Advantages and Defects—Double Votes invented as a Remedy—Insufficient—Restrictions on the individual Governments—Directing-Canton; its functions—Diet; its meeting; its proceedings; its powers—Absurdity of the manner of Voting—Foreign Enlistment—Internal Constitution of the Cantons—Two Classes; six democratic—Their Constitution—General Assembly or Land-Gemeinde—Councils—Thirteen Aristocratic or Mixed—Great and Little Councils—Mode of Election—Grabeau—Courts of Appeal—Table of Details—Napoleon's Conduct—Existing Constitution of 1815—Twenty-two Cantons—Contingents of Troops and Money—Arbitration—Diet; its constitution; powers—Vacation—Commission—Directing-Cantons—Restoration of selling Troops, and Monastic Institutions—Six Democratic Cantons—Their Constitutions; General Assemblies; Councils—Table of Details—Seventeen Aristocratic Cantons—Their Constitutions; Great and Little Councils; composition and powers—Catholics and Protestants—Bad Principle—Elections; duration of office; qualifications—Table of Details.—Conclusion of this Work—Its Objects—The want of it—Duty of the People.

ALTHOUGH the Constitution of the Aristocratic Cantons has been fully considered in the Second Part (Chap. XXVIII.), and a general view has been given of the Democratic Constitution in Chap. IV. of this Third Part, yet it will be convenient, though at the risk of some repetition, to give a view of the whole Helvetic Confederacy here, which will close this work.

When Switzerland was severed from Ancient Gaul, it came into the possession, successively, of the Franks and the Burgundians. United to the great Empire of Charlemagne, upon its dissolution under his successors, this poor and mountainous terri-

tory frequently changed hands, having no substantive force to defend its independence, and being thus left as a prey to whichever party had the upper hand in the various struggles for dominion which divided Western Europe for so many ages. The feudal tyranny of the Barons early threw the Helvetic people upon the resource of foreign protection, and they found it in the House of Hapsburgh, afterwards raised to the Throne of the Austrian Duchy, and frequently invested with the Imperial dignity in Germany. At first one or two cantons, and afterwards the whole, came under this Austrian protection; and towards the end of the thirteenth century they were incorporated with the Empire. In 1300, Albert of Hapsburgh having attempted to establish absolute power over them, they resisted, and, after a glorious struggle, asserted their entire independence at the famous battle of Morgarten, fought in 1315. The foundation of the Confederacy was then laid by the three cantons of Schwitz, Uri, and Unterwald, called the *Wald-Stetten*, or Forest Cantons, who now would acknowledge no protector save the Germanic League. This Confederation bound them to make common cause against all attacks from without, to form no alliances but in common concert, to admit no foreign judicature, nor have any domestic judge who bought his place, to settle all disputes among themselves by arbitration, compelling each other's submission to the award, and finally to afford no asylum to fugitives from one another's territories. The Constitution of each Canton was purely democratic. The supreme power was vested in the people at large, all males of fourteen years old in Uri, of fifteen in Schwitz and Unterwald, having a voice; and though Deputies were chosen to represent the people in the Council of Regency, and a Land-Amman, or chief magistrate, was also appointed, yet the supreme power was exercised by the yearly Diet, or general assembly held in the open air, and by extraordinary Diets called as occasion might require. To these Diets the Land-Amman was accountable.

The Constitution of Lucerne was originally also a pure Democracy, under a feudal lord, the Abbot of St. Gall; but when it placed itself under the Austrian protection it became aristocratic. In 1331 it joined the Federacy; as did Zurich in 1351; when the General Diet was established, but only as an occasional meeting of Delegates, or envoys from the five Cantons, to discuss

weighty concerns of general interest. Soon afterwards Zug and Glaris joined the League, and then Bern; so that there was now formed the Federacy of the old Eight Cantons.

The government of Zug and Glaris was democratic like that of the Wald-Stetten, or three Forest Cantons. Bern was more on the aristocratic model, having two Councils, one of two hundred, the other of twenty-six, and two chief magistrates, called *Consuls* or *Burgomasters*, as they were in all the aristocratic governments; while in the democratic they were called *Ammans*, or *Land-Ammans*; and in the mixed, *Avoyers*. Lucerne was aristocratic like Bern, its Councils consisting of one hundred and eighteen respectively. The Great Council, both in Bern and Lucerne, dealt with the general concerns of the Canton, the Little with the government of the town or capital. In Bern, the Avoyer, with sixteen notables, chosen in equal numbers from the four wards or quarters of the city, filled up the vacancies in the Councils; the Avoyer was himself elected for two years. In Lucerne he held his office for only one year. There was this material difference between the Government of these two Cantons, that in Lucerne the Council administered justice over the country bailliages as well as the city, whereas in Bern each bailliage had its own Courts, with an appeal to the City Council.

In Zurich the Government was also of an aristocratic form; there being two classes of the people, the noble and the roturier or commonalty. The nobles formed one tribe, the roturiers twelve tribes, or companies, into which the different trades were divided. Each tribe chose twelve members of the Great and three of the Little Council; the nobles choosing eighteen of the former and six of the latter. The magistrates were two Consuls, or Burgomasters, chosen by the Great Council.

In 1481 Friburg and Soleure were admitted into the League, and by the Convention of Stanz, a federal pact, or law, was established for the whole body. In 1501 Basil and Schaffhausen joined, and in 1513 Appenzell. In 1499, after a long war with the Emperor Maximilian I., the whole of Switzerland shook off its dependence on the Empire, and this was the last struggle for independence. The Government of Friburg and Soleure was of a mixed cast, between the aristocratic and democratic forms. In Fribourg there were four wards, or quarters, which chose a Council of two hundred and another of twenty-four. The people chose the



Avoyer, or chief magistrate, who held his office for two years. In Basil and Schaffhausen the Government was aristocratic, there being an order of nobility distinguished from the commonalty, or roturiers. In Basil there were fifteen tribes, in Schaffhausen eleven. In Appenzell all the inhabitants enjoyed the same political rights, with no distinction between those of the town and those of the country, and the Government was a pure democracy like that of the Wald-Stetten.

The three bases on which the Federal Union and Constitution rested were the Treaty of Sempach in 1393, regulating the military contingents and discipline of the Cantons; the Convention or Covenant of Stanz in 1481, generally regulating the League; and the Peace of Arau in 1712, settling the differences between the Catholics and Protestants. The eight old Cantons had considerably higher privileges than the five who were more recently admitted into the League. The latter could not make war without the consent of the former, who could demand aid of the five in any war, without even assigning the reasons for engaging in it. Beside the General Diets held, there were particular ones as of the eight old Cantons; and also Diets of the Protestant and Catholic Cantons severally. The Protestant Diets were termed *Evangelical Conferences*, the Catholic *Golden Alliance*. The Swiss Federal Commonwealth consisted of thirteen Cantons as its members, but there were several large districts possessed by the Federacy as appendages, which sent no Deputies to the Diet, and were not States of the League.

These allied cantons were either *Confederates*, as Grisons, Valais, Geneva, Neuchatel, and Basil; or *Associates*, as St. Gall, Bienne, Mulhausen; or *Subject Bailliages*, as Turgau, Ticino. The population of the first class was about a ninth; of the second a half; of the third class more than a third of the thirteen Cantons who formed the League; consequently the whole together were about equal to the Thirteen. The Grisons had a Federacy of their own, with a Diet, ever since the middle of the fifteenth century. The Diet consisted of sixty-three deputies and three chiefs: the deputies being sent by the three subordinate bodies composing the League; that is, by the Grey League, an ancient confederacy, which sent twenty-seven deputies; the League of God's House, which sent twenty-two; and the Ten Jurisdictions, which sent fourteen. At this Diet all the Deputies were obliged

to obey the instructions of their constituents; but whenever these were of doubtful import (and this obscurity was often cautiously left on purpose to give them a discretion), then the majority determined their sense. The Executive power was vested in the Congress, composed of twelve; that is, three Deputies from each of the Leagues and three chiefs. The *Landrecht* or chief Magistrate was chosen by the Deputies from three candidates, of whom the Emperor of Germany named one, the Abbot of Desunts another, and the Cau (sometimes called the Count) de Sax a third—he being the person, often a peasant, yearly named to fill this almost nominal office. The right of voting was universal, being vested in all males; and the legal age in some Cantons was fourteen. The corruption which prevailed in this Grison confederacy is known to have been great and universal. Ever since the Treaty of Milan in 1639 the influence of Austria was predominant in all its concerns.

The General Diet of the Helvetic League was commonly convoked by the Canton of Zurich, which fixed both the time and place of meeting; but if any other Canton thought fit, it could call upon Zurich to assemble the body, and even could summon the Deputies in case of emergency. At the Special Diets for particular objects only those Cantons sent Deputies whose interests were concerned, and at all Diets the votes were taken by Cantons, and the question determined by their majority, and not by the relative numbers of Deputies who might attend; for each Canton could send whatever number of representatives it chose.

In 1798 the French armies, under the Directorial Government, entered Switzerland, and forced on the people a new Constitution, framed upon the model of that which then was established in France. It had an Executive Directory, with a Legislative Body, and was termed the "Helvetic Republic, one and indivisible." This system continued to govern the country until 1803, when Napoleon, after great discussions with the Swiss Deputies, which lasted many months, and gave occasion to a minute examination of the interests and of the feelings in the different Cantons, established a new Federal Government. This work is by no means the least remarkable production of that extraordinary man, whose genius, alike master of general principles and minute details, had presided over the great work of the French Codes. It is impossible to deny that very great

attention was bestowed upon the local circumstances of each Canton, and that the ancient Constitution was, in the main, preserved wherever it had taken a deep root in the people's affections. Thus, while in the Aristocratic Cantons we find great traces of the patrician regimen, without, however, retaining anywhere the oppressive rule of the towns, and the odious distinctions which subjected the country inhabitants to the Burghers; in the Democratic Cantons, as the Wald-Stetten, we find a large proportion of the purely republican government retained, and indeed the supreme power vested in the hands of the whole people, though without the absurd provision which had formerly allowed boys of fifteen, or even fourteen, years old to vote in all Legislative Assemblies. It is true that this Constitution ceased to govern the Helvetic body after Napoleon's fall; yet it presents sufficient matter of meditation to the political inquirer, and its principles were engrafted upon the present system in abundance enough to render a statement of its broader outlines proper in this place.

The whole members of the Ancient Federacy, as well the appendages, or subject districts, of Grisons, Vaud, St. Gall, Argau, Ticino, and Turgau, as the Thirteen Cantons, were the members of the new Federal body, now composed of nineteen Cantons, all independent as regarded their internal government and administration, but all united by the relations of the Proper, or Perfect Federal Union. The quota of taxes or men to be furnished by each was regulated: thus of every 15,206 men Bern was to furnish 2292, Zurich 1929, Vaud 1482, St. Gall 1315, and so on down to Uri, whose contingent was only 118; and so of every 490,507 taxes Bern was to contribute 91,695, Zurich 77,163, Vaud 59,273, St. Gall 39,451, down to Uri, whose assessment amounted to only 1184. The great inequality of the Cantons is thus shown; four of the nineteen furnishing as many troops, and more money, than all the other fifteen. Indeed, Bern alone furnished more men than eight small Cantons, and more money than ten. The disproportion of the population is fully as great. Of the 2,188,000 comprising the whole inhabitants, Bern has 408,000, and ten of the others have only 423,000. But it is the triumph of the Federal System to unite in one body with equal rights states of such different magnitudes, and to protect the rights of a Canton like Uri, with

its 13,000 inhabitants, its quota of 120 men, and its contribution of 45*l.*, as well as one whose population is thirty fold, and contribution to the common fund eighty times as great. To be sure, the injustice and impolicy of giving the same voice in the councils of the Federacy to the one and to the other of these states, of making a village as important as a great city, is equally manifest; and, accordingly, the Constitution which we are examining provided, in some sort, for this imperfection. The whole votes were not nineteen, but twenty-five, and the six greater Cantons had each two votes, the other thirteen having only one each. Still there was a great disproportion; and a Canton like Friburg had only the same voice with one which, like Uri, paid seventeen times less contribution, and had seven times fewer inhabitants.

Though each Canton had the government of its own concerns, none could maintain a greater force than 200 men; none could make any alliance with another, or with any foreign power; none could confer exclusive privileges on any class or family of citizens; and all were subject to the authority of the Diet: so that the executive government, or the Legislature of any one Canton, could be accused and punished for violating any decree of the Diet, by a High Court of Justice constituted of the Presidents of the Criminal Courts of the others.

The six greater Cantons of Bern, Zurich, Lucerne, Soleure, Friburg, and Basil were *Directing-Cantons* year about, and the Chief Magistrate, or Avoyer, of the Directing-Canton was the Land-Amman of Switzerland during his year. He had the conduct of all negotiations, and represented the Republic with Foreign Powers, informing the Diet at its assembly of the state of Foreign relations. He had also the office of repressing revolt in any Canton, but upon the requisition of either Council of the Cantons. In case of any dispute arising between two Cantons during the recess of the Diet, he appointed arbitrators to settle it, or put off the affair till the Diet met, at his option.

The Diet was composed of Deputies from each Canton; each sending one, with one or two Counsellors to supply his place in case of absence or illness. All the Deputies were bound to follow the instructions of their constituents. The Land-Amman was the Deputy of the Directing-Canton, and president of the Diet. The Diet met in June, and sat not longer than one

month. But extraordinary Diets might be called, either on the requisition of a neighbouring power, or of a Canton, acceded to by the Great Council of the Directing-Canton; or on the requisition of the Grand Council, or General Assembly of four of the other Cantons; or by the summons of the Land-Amman of Switzerland.

The Diet declared war, and made peace and alliances, three-fourths being required to concur. The manner of voting has been already stated; and it follows from thence that, five Cantons having one-thirteenth of the population, and contributing one-twentieth to the taxes, and one-seventeenth to the armies of the Federacy, might prevent a peace from being concluded, or a treaty made, against the unanimous voice of the whole Swiss Union. It would be somewhat, but not much less, absurd if the three-fourths were counted not by Cantons but by the votes, double and single, in the Diet. Suppose the West Riding of Yorkshire, or the counties of Surrey and Sussex, had the power of stopping any of the most important national measures in our Legislature—our Constitution would present the same anomaly which arose from the Federal policy in Switzerland, and from the additional evil of requiring more than the absolute majority of voices to determine any question. (Part III. Chap. ix.)

The Diet had the sole power of naming commanding officers of the forces, and ambassadors on extraordinary missions. In all disputes between different Cantons, if arbitration did not settle them, the Diet formed itself into a *Syndicate*, in which each Deputy had an equal voice, and no one was to follow any instructions from his constituents. The Diet alone could give authority to recruit in any Canton for a foreign power. Indeed foreign enlistment had long ceased in Switzerland in almost all the Cantons. Before the Revolution 15,000 Swiss were in the French service; half that number in the Dutch; and several regiments were in the pay of Piedmont, Naples, and Spain. Such was the Federal Government.

The internal Constitutions of the Cantons were various, but they might be divided into two classes. The first class consisted of the first five, which were united, that is, the three Forest or Wald-Stetten, with Zug and Glaris, and Appenzell, the last which joined the Federal Union. The thirteen other Cantons formed the second class.

The Constitution of the first class was Democratic; the ancient government being very nearly preserved. The power of legislation, and generally the supreme power, was vested in the General Assembly, called *Land-gemeinde*, composed of all males of twenty years of age; but they could discuss no matter which was not laid before them by the General Council in some (*Land-rath*), the Little Council in others, and in Appenzell by the Great Council. The councils were chosen in the same manner as in former times, and the Land-Ammans and other officers were generally appointed in the old way also.

The second class of Cantons had generally the same frame of government, but in the details, as in the amount of qualification for exercising the elective franchise, and in the mode of removing persons elected, they differed one from another. In all the thirteen Cantons of the second class, each citizen of sixteen years old was a soldier; and the right of voting was given to all of thirty years old if never married, or if married or widower twenty—possessing a certain varying amount of property. In all there were two Councils, one elective, called the Great Council, which had the legislative power; another chosen out of that Body by its own voices (except in the Grisons, where it was chosen by the electors), and called the Little Council—which had the exclusive power of proposing laws, and of calling extraordinary meetings of the Great Council; it was always in session, was an executive body, and was renewed by a third yearly. There was in all the same mode of electing the Great Council. The electors chose in their districts one representative for each, and so many additional candidates from their own limits, and so many from other circles, of whom a reduced number were chosen by lot, and these with those directly chosen formed the Great Council. At the end of two years in six of the Cantons there was the operation called the *Grabeau*—literally sifting out of the dregs. It consisted in a body of fifteen, being chosen, five by lot out of the ten older in each electoral district, five of the ten richer, and five of the inhabitants indifferently; these fifteen determined by ballot if one or two of the Deputies should retire; and if they so decided, the whole voters, by an absolute majority, and by ballot, decided finally on their removal. In all the Cantons there was a Court of Appeal of thirteen of the Great Council; in all the

Great Council met for a few days in the half-year, but the Little Council was permanent.

The difference in other details may be more conveniently understood by the following table :—

Cantons.	Property Qualification.	No. of Great Council.	No. of Little Council.	Grabeau.	No Grabeau.
Argau.....	200 p. 300 m.*	150	9	Had not	..
Basil.....	500 p. and m.	135	25	Had	..
Bern.....	1000 in Bern 500 in Country.	195	27	Had	..
Friburg....	500 p. and m.	60	15	Had	..
Grisons.....	..	63	3	..	Had not.
Lucerne.....	500 p. and m.	60	15	..	Had not.
St. Gall....	200 p. 300 m.	150	9	..	Had not.
Schaffhausen.	500 p. and m.	54	15	Had	..
Soleure.....	500 p. and m.	60	21	Had	..
Ticino.....	200 p. 300 m.	110	9	..	Had not.
Turgau.....	200 p. 300 m.	100	9	..	Had not.
Vaud.....	200 p. 300 m.	150	9	..	Had not.
Zurich.....	500 p. and m.	195	25	Had	..

\* p. means Property ; m. Mortgage.

Such was the Constitution of Switzerland which Napoleon imposed, after great deliberation, and after much conference with the Helvetic Deputies, when he assumed the office of Protector of the Helvetic Body. It was not, perhaps, framed with all the minute attention to former laws and usages which marked the composition of his famous Codes ; but it was not hastily, nor without deep reflection, prepared, and it was not without every attempt at conciliation finally promulgated. I remember meeting soon after with some well-informed and patriotic Swiss, who, with one voice, confessed that, if they had not got all they might have desired, they had got more than they could have expected, and that their Deputation left Paris, after transacting the business of this lengthened negotiation, with the impression that, at all events, they had a lawgiver in the First Consul who thoroughly understood their character, their habits, and everything appertaining to the subject wherewith he had to deal.

When the Imperial power was subverted in 1814, Geneva,

Neuchatel (a Prussian possession), and the Valais were added to the Federacy, which thus consisted now of twenty-two members; and a Constitution was given by the Congress of Vienna in 1815, which still is the Government of Switzerland. The contingents are fixed upon the total number of troops that the League is to keep on foot—namely, 32,886; of which Bern furnishes 4584, Zurich 3858, Lucerne 1734, Grisons 2000, Friburg 1240, Argau 2410, Neuchatel 1000, Ticino 1804, Vaud 2964, Valais 1280, Schwitz 602, Unterwald 382, Glaris 482, Zug 250, Uri 236, Appenzell 972, St. Gall 2630, Turgau 1670, Schaffhausen 446, Soleure 904, Basil 818, and Geneva 600. The expenses in money of the League are to be contributed in somewhat of the like proportions,—Bern paying 91,695, and Uri 1184, in 540,100 francs. In case of any dispute arising among any of the Cantons, on any matter not provided for by the Federal Constitution, each shall choose as arbitrator one or two of its Magistrates, who shall choose an umpire (if they differ) from among the Magistrates of an indifferent Canton, and if they agree not in the choice the Diet shall name him.

The Diet is composed of Deputies from the Cantons, each Canton having one vote. The Diet meets yearly, or when convened by the Directing-Canton, and the Avoyer of that Canton is President. The Diet makes war, peace, treaties; three-fourths must concur on all such graver matters. The Diet also makes commercial treaties. Each Canton can form engagements with Foreign powers respecting the hiring of troops to serve abroad, and touching Police or economic arrangements; but those bargains must be consistent, in all respects, with the principles and powers of the Confederation, and must all be laid before the Diet. The envoys of the Confederation are named by the Diet, which also appoints the commander of the forces, and provides for their levy and distribution. The Diet may, during its recess, give extraordinary powers to the Directing-Canton to meet any extraordinary emergency, and join to it six representatives of the Confederation, with special authority and instructions. In this case two-thirds of the votes are required to authorise such delegation. The Federal Representatives are named by the Directing-Canton appointing one, and the other five being named by bodies of three or four other Cantons choosing one each. The Directing-Canton keeps its station for two years,



and Zurich, Bern, and Lucerne hold this office in rotation. The Constitution guarantees the rights of Monastic bodies, but their property is subject to taxation, like that of other land-owners.

It is impossible not to regard with indignation, tempered perhaps by pity, a solemn treaty framed and executed by all the most enlightened states of Europe in the nineteenth century, restoring the great scandal of the Swiss Government and name, their mercenary hiring out of soldiers to fight the battles of foreign powers, and to guard foreign Despots, and retaining the grossest abuse of religion and morals in modern times—the establishment of Monastic Orders.

There are under the new Constitutions of the individual Cantons, as there were under that of 1803, two distinct classes, one democratic, the other having a large admixture of aristocracy, or rather oligarchy. Of the former description there are six, as before,—Appenzell, Lucerne, Glaris, Unterwald (divided, however, into two, with somewhat different Governments), Zug, and Uri. Of the latter kind are all the other sixteen, except Neuchatel, which is a pure monarchy.

The six democratic Cantons are governed each by a General Assembly and a Council, the former naming the executive Magistrates, or Land-Amman, making the laws and carrying on negotiations, as well as declaring peace and war; the latter having chiefly judicial functions. The Council is chosen by the General Assembly, and has the initiative of legislative measures, as well as the superintendence, with the Land-Amman, of the Executive Government. The right of attending General Assemblies is possessed by all citizens, in some only by burgesses, in others by persons who have attained majority, which in some Cantons is twenty, in one nineteen, in one as low as sixteen. The General Assembly, beside choosing the Land-Amman, appoints the Deputies to the Diet, and in most of the Cantons gives them their instructions. In some Cantons there are several Councils, with various functions, and the legislative power is delegated to them by the General Assembly, which nevertheless appoints the great officers. Thus in Zug there is a *Cantonal* Council of the Land-Amman and fifty-four members, elected by the Circles, and it exercises judicial functions. The *Triple* Council is composed of these fifty-four members and of 108 Adjoints, and exercises legislative functions, being assembled

three times a-year, and as often besides as the Cantonal Council chooses to convoke it. The Triple Council instructs the Deputies to the Diet, but the General Assembly appoints them.

The following table exhibits the material details of the Constitution of these six Cantons :—

	Appenzell extra.	Appenzell infra.	Glarus.	Schwitz.	Unter- wald, High.	Unterwald, Low.	Uri.	Zug.
Age of Voting. }	16	18	20	16	20	20	20	19
Council..	Magis- trates & other Officers.	124	600 With Func- tionaries.	60	65	580 With Magis- trates.	44 With Func- tionaries.	55*

The general frame of the Constitution in the other Cantons is that the legislative power and the appointment to the executive offices is vested in a Great Council, and exercised through the medium also of a Little Council ; and that the Great Council is in part elective, being chosen by the persons in each town or country district who possess the right of burghers, either by obtaining it themselves or by right of inheritance. The bad principle of self-election, however, is largely introduced, there being in all the Cantons (except Geneva, Friburg, Grisons, Valais, and Schaffhausen) a large proportion, in some a decided majority, of the Great Council elected by itself, or, which amounts to the same thing, by other bodies which that Great Council appoints. The Little Council is in every instance, as it was under the Constitution of 1803, chosen by the Great Council, and from its own members. It is, in fact, a Committee of the Great Council, and exercises, not only most of the executive or administrative functions, in conjunction with the Avoyer, Burgomaster, or Bailly, the chief magistrate, but has also the exclusive power of propounding measures to the Great Council. The Little Council sits constantly, the Great Council only twice a-year, in some Cantons three or four times, and when specially convoked by the Little Council. The Great Council chooses the Deputies to the Diet, and gives them their instructions.

\* This is the Cantonal Council, which resembles in its functions the Little Council of the Aristocratic, or mixed Cantons. The Triple Council exercises Legislative power, and is composed of 54 of the Cantonal, with 108 Adjoints ; in all, 162.

In the Cantons where there are divisions of the inhabitants into Catholic and Protestant, the Constitution provides for a certain proportion of the Councils belonging to each religion, and that both in the democratic and aristocratic Cantons. Thus in the democratic Canton of Glaris, the Council of sixty must have forty-five Catholic and fifteen Protestant members. In the aristocratic or mixed Canton of Argau, the Great Council of 150 must have seventy-five of each sect. This very pernicious regulation, perpetuating religious discord, was first introduced by the Congress of 1815. But there is another provision still more to be condemned. In many of these Cantons the Catholics and Protestants have their several Councils for the discussion and regulation of their several sectarian concerns ; a contrivance manifestly tending to exasperate the sects against one another, and prevent, what all wise and just rulers would above everything desire, the melting of the whole community into one body of citizens in all that concerns their temporal affairs. The mode of exercising both the elective power by the community, and the self-electing power by the Great Council, varies in the different Cantons, and in some it is complicated. Thus in Soleure the sixty-six, whom the burgesses choose, are named by Electoral Colleges composed, like the Committee of the Grabeau, under the Constitution of 1803, that is, of fifteen taken by lot, five from among the ten oldest, five from the ten wealthiest, and five in the Canton indifferently. The term of their holding office also varies from three years, with triennial elections, as in St. Gall, to six years as in some, a third going out yearly, as in Zurich is the case with the eighty-two chosen by the community ; to twelve years in others, a third going out every four years, as in Argau ; in others to eight years, half retiring every four years, as in Zug and St. Gall ; to tenure for life, as is the case with the sixty-four of the Great Council in Lucerne. The following table will conveniently explain the differences in the Cantons :—

## CANTONS IN RESPECT OF THEIR COUNCILS AND THE QUALIFICATION OF VOTERS.

	Majority.	Great Council.	Named by Themselves.	By People.	Little Council.
Argau . . . . .	25	100	36	32	9
Basil . . . . .	20	150	90	60	25
Bern . . . . .	20	299	200	99	27
Friburg . . . . .	20	60	..	60	15
Grisons . . . . .	17	65	..	65	3
Geneva . . . . .	25	278	..	278	28
Lucerne . . . . .	20	100	69	31	36
Neuchatel . . . .	Under	King of Prussia — no popular Constitution.			
St. Gall . . . . .	20	150*	50	100	9
Schaffhausen . .	20	74	..	74	24
Soleure . . . . .	20	101	66§	35	21
Ticino . . . . .	25	76	38	28	11
Zug . . . . .	20	100†	68	32	9
Valais . . . . .	18	52‡	..	52‡	5
Vaud . . . . .	25	180	117	63	13
Zurich . . . . .	20	212	120	82	25

The Government of Neuchatel is purely Monarchical, the King of Prussia being the Sovereign. There are the three Estates, but it is a body purely judicial, being composed of twelve judges, of whom eight are for life, and four named yearly. They have no legislative power whatever. The Council is named by the King, and it, together with the King himself, and a kind of municipal body of the town of Valengin, makes the laws.

With respect to religion, the Cantons wholly Catholic are the Wald-Stetten (Uri, Schwitz, Unterwald), Soleure, Lucerne, Friburg, and Zug; the Protestant, Zurich, Bern, Basil, and Schaffhausen; the other two, Argau and Appenzell, are mixed. Of the allied Cantons, St. Gall (city), Grisons, and Valais are Ca-

\* 84 are Catholics, and 66 Protestants.

† 25 at least must be Catholics.

‡ The Great Council is called "the Diet," and the Little Council "the Council of State."

§ These 66 are chosen by the Great Council from lists of candidates presented by the Little Council.

|| 54 are chosen by the Great Council absolutely, 63 are selected by them from candidates presented by the Electoral Assemblies.

tholic ; Neuchatel, Geneva, Mulhausen, St. Gall (country parts) are Protestant. The total population of the Protestant Cantons is double that of the Catholic ; but the population of the Catholic Allied Cantons is nearly threefold that of the Protestant ; so that there are in the whole Helvetic nation about equal numbers of Catholic and Protestant inhabitants.

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This brings to a close the examination of Democratic and of Mixed Constitutions, and with that inquiry closes also the work upon which we have been so long engaged, namely, the first great branch of Political Philosophy, and by far the most important branch—the Theory of Government, and its application to the Constitutions which have been at any time framed by human skill, for the direction of human affairs.

We have now had an opportunity to consider minutely all the great principles which have guided men's conduct in the systems of polity founded by them at any period in the history of the world. We have discussed the foundations of Government generally, of its different species severally, under the six several heads of Monarchy, Absolute or Oriental—Constitutional or European—Aristocracy—Democracy—and Mixed Government, whether Monarchical—or Aristocratic. We have weighed the merits and the faults of all these schemes of polity in much detail, and have examined minutely the practical working of each. We have, then, investigated the application of the general principles to the various forms of Government, which have at different times, and in various countries, been known among nations. We have traced the history of them all—examined the advantages secured and the disadvantages experienced under them all severally—contemplated their practical working—compared them one with another to show both their resemblances and their diversities—and have constantly referred their detailed arrangements to the general principles of Government previously expounded. Our examination has in this way comprehended between forty and fifty forms of Government in ancient and modern times. Upon the important subject of the British Constitution we have naturally dwelt much more minutely than upon any other ; next to our own, upon the Constitution and the Constitutional History of our friends and neighbours the French.

It is impossible for me to look back upon the vast field over which I have presumed to travel, both of general principles, of comparative views, and of Historical and Statistical facts, without feeling appalled by the boldness of an undertaking so far beyond the reach of any powers, whether of reasoning or of learning, which I could bring to bear upon it. That I may have escaped error in the theory is more than I can venture to hope. Far less can I flatter myself that material errors have not been committed in dealing with the great mass of details which it became necessary to examine. They who have most profoundly studied the principles of Government, they who have most learnedly examined its records in the history of human policy, and they whose knowledge of existing institutions in foreign countries is most extensive, will be the most candid judges of my labours, because they are the best able to understand the great difficulties of such an enterprise. One fault, however, I feel assured that no one will find in this work—it is wholly free from party bias. That its author entertains, and has always entertained, very sincerely, certain opinions upon political affairs, every reader will discover, because no pains have been taken to conceal them; but no sacrifice has been made to party or to personal considerations: on the contrary, every opportunity has been taken to show how pernicious party spirit has generally proved, and how sacred a duty the people have to think for themselves, and not suffer any factious leader to form their opinions for them, upon the great questions which regard the frame of Government and the administration of public affairs.

It is with an humble but an honest view to provide help for the People in the discharge of this high duty, that I undertook the work now brought to a close. There never had before been any such book; any treatise to which ignorant persons might be referred for full and impartial information upon the general principles of Government; much less any work upon the various Constitutions of States in ancient and modern times. The Society justly deemed that, no work being more wanted, none came more properly within the scope of an Institution for Diffusing Useful Knowledge; and I can only hope that, if the execution of so great and so beneficial a plan shall be found unsatisfactory, my labour of five years may, at least, encourage, possibly help, others in devoting greater powers to supply the want heretofore

justly complained of, so that at length a work may be obtained for the people, better deserving the title of '*Political Philosophy*.'

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NOTE.—I may perhaps be permitted to mention that the work was originally intended to have been published by the Society without any name, as I was exceedingly averse to appear as the author. Accordingly the First Part was given anonymously; but being requested by my colleagues to give my name to the other two parts, I yielded reluctantly to their wishes. This disinclination arose only from the dislike of obtruding myself needlessly, as it seemed, upon the public attention. In like manner, the '*Illustrations of Paley*' had been originally designed as an anonymous publication, for a like reason, by my learned friend Sir Charles Bell, and myself; but the rules of the Society were supposed to prevent its undertaking that work, and we were obliged, however unwillingly, to publish it with our names.

*Château Eleanor-Louise (Provence),*  
31st December, 1843.

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